Commentary
October 2003

Has the Supreme Court Gone Too Far?

A Symposium

Robert L. Bartley • William J. Bennett • Peter Berkowitz
Robert H. Bork • Alan Dershowitz • Lino A. Graglia • William Kristol
Sanford Levinson • Dahlia Lithwick • Jeffrey Rosen • Cass R. Sunstein
George Weigel • James Q. Wilson

Fables of the Erotic Other—A Story
John J. Clayton

What Remains of Robert Lowell?
Thomas L. Jeffers

Cartooning, Left and Right
Michael J. Lewis

Prokofiev's Return
Terry Teachout

CONTROVERSY
Watching China
Arthur Waldron & Critics

Books in Review
Carl Gershman • Kay S. Hymowitz • Claudia Rosett
Dan Seligman • Steven G. Marks

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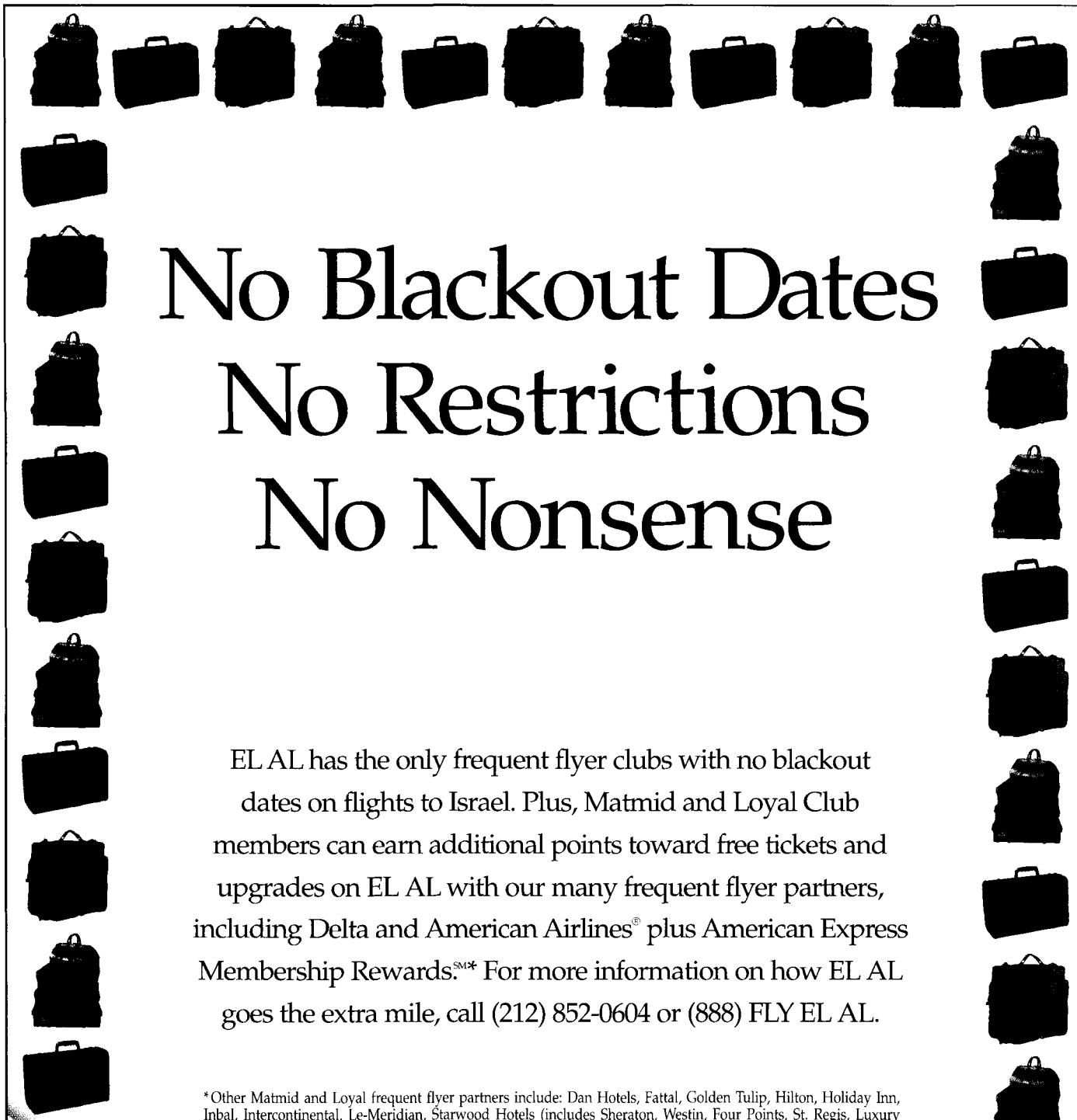

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Commentary

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Commentary
October 2003

Letters from Readers

Friends & Enemies

To the Editor:

In his description of the hostile geopolitical environment confronting the Bush administration during the drawn-out prelude to Operation Iraqi Freedom ["Lessons of the War," June], Victor Davis Hanson resorts to unmistakably derogatory rhetoric when he calls Turkey a "suddenly fickle ally." This all-too prevalent sentiment was prominently expressed by Deputy Secretary of Defense Paul Wolfowitz, who in an interview with CNN berated the Turkish military for having failed to ensure compliance with American demands. "They did not play the strong leadership role that we would have expected," Wolfowitz said. But in light of the Turkish military's historically volatile relationship with that country's fragile democracy, such rebukes carry ominous implications.

Ever since Kemal Ataturk forged a secular Turkish state, the military has assumed the role of guardian, intervening when the government is perceived to be threatening its staunchly secular values. (An example occurred in the late 1990's with the government headed by Necmettin Erbakan, which was deemed too Islamic.) The government that welcomed Wolfowitz during his visit last December was led by Recep Tayyip Erdogan, whose moderate Islamic party had swept to power in Ankara just a few weeks prior. Although Erdogan, wooed with a reported aid package of $5 billion, supported the stationing of U.S. forces on Turkish soil for the purpose of attacking Iraq, he was ultimately unable to win over the democratically elected parliament. According to an opinion poll by the Pew Research Center conducted during the height of the diplomatic maneuvering, 83 percent of the Turkish public opposed allowing U.S. forces to invade Iraq from their soil.

Since the United States waged this war for the ostensible purpose of bringing democracy to the region, the actions of the Turkish parliament amounted to a beautiful if painful affront to American power. What Mr. Hanson calls "fickle" behavior, although it complicated U.S. combat operations during the war, was in fact a rare showing of democratic strength in the Middle East. Coupled with Saddam Hussein's ouster, Turkey's actions are cause for optimism about the future of democracy in the Middle East; Mr. Hanson's misguided denunciations are cause for great concern.

Evan R. Goldstein
Boston, Massachusetts

To the Editor:

Victor Davis Hanson's article is a fascinating introduction to what we have learned about war in the Middle East. But it is surprising that an article discussing the Iran-Iraq war and the entangled web of past military alliances fails to mention the United States' involvement in funding and arming Iraq before, during, and after that war, much less the fact that this aid continued even after we knew of Iraq's use of chemical weapons against Iran. This seems a significant omission.

David Foster
San Diego, California

To the Editor:

In "Lessons of the War," Victor Davis Hanson writes: "On April 17, 2002, the *Guardian* called the supposed massacre at Jenin 'every bit as repellent as Osama bin Laden's attack on New York.'" This is far from a fair, full, and accurate quotation. Here, for comparison, are the pertinent sentences from the original article: "Jenin camp looks like the scene of a crime. Its concrete rubble and tortured metal evokes

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another horror half a world away in New York, smaller in scale but every bit as repellent in its particulars, no less distressing, and every bit as man-made." While I concede that the sense is more or less synonymous, Mr. Hanson's charge is, strictly speaking, fallacious.

I am not writing to dispute the bent of Mr. Hanson's article—indeed I might agree with it in large part—but in light of the recent *New York Times* scandal, I am perturbed that a tendency to distort, misrepresent, or fabricate facts appears to be a widespread phenomenon in publications across the political spectrum.

CHRIS SHANNON
Rome, Italy

TO THE EDITOR:

"Lessons of the War" is the single best article I have read on the Middle East in general and on Iraq in particular. As a disabled army veteran of Desert Storm with a deep-vested interest in the second Gulf war, I can say that Victor Davis Hanson has captured the essence not only of Iraq but of the Middle East itself. Thanks for telling the facts as they are.

STAFF SERGEANT GREG J. BABIARZ
Orlando, Florida

VICTOR DAVIS HANSON writes:

A hypersensitive Evan R. Goldstein thinks my use of the sober phrase "fickle behavior" to describe Turkey's eleventh-hour refusal to allow the intervention of American troops from its soil deserves to be characterized as "unmistakably derogatory rhetoric," carrying "ominous implications" and leading to "misguided denunciations." How silly. First, Mr. Goldstein wrongly implies that legitimate anger at a democratic ally somehow constitutes pressure against the institutions of democracy *per se*. But we often criticize our democratic allies, just as they criticize us when they or their constituencies are at odds with our policies. Consider Gerhard Schroeder's anti-American rhetoric during his recent reelection campaign in Germany—and our reaction to it.

Second, no one thinks that other democracies, by their nature, will or must always be in lockstep with us. Along with France, Turkey has gravitated to the status of a neutral like (democratic) Sweden and (democratic) Austria, which also forbade the transit of American troops. Even so, we respect and welcome Turkey's strong democratic voice, just as, one hopes, the Turks respect and welcome ours.

Finally, Mr. Goldstein misstates the gravity of what happened. The sudden refusal of a NATO ally to allow us to attack neighboring Iraq from its soil did more than "complicate U.S. combat operations." Forget the series of abrupt reversals in Turkish policy, the constant stream of mixed signals, the demand for billions of dollars in new aid, and the often virulent anti-Americanism expressed on the Turkish street. The last-minute refusal caused the entire Iraq campaign to be revamped, forcing the long column from Kuwait that resulted in unnecessary American deaths. Much of the present unrest in the so-called "Sunni triangle" is, moreover, directly attributable to the fact that the Fourth Infantry Division was not able to barrel down from Turkey in the war's first few days to spread over and subdue Saddam's heartland, cut off the Tikrit-Baghdad highway, and enter Baghdad from the north. Other foreseeable problems in the months ahead are similarly likely to hinge less on American harshness to Turkey than on Turkey's treatment of the democratic and federal state in Iraqi Kurdistan.

Along with David Foster, I worry that too much American military aid ends up in the hands of frightening regimes—most recently, Saudi Arabia and the Palestinian Authority. But, in real dollars, the help we extended to Saddam Hussein's evil autocracy amounted to less than the guns and money that have cumulatively gone to Yasir Arafat's cabal, and was confined almost entirely to the period before and during the Iran-Iraq war.

It was, to be sure, a misguided, immoral, and regrettable policy, but two considerations must be kept in mind even as we express necessary remorse. First, in response to the takeover of the U.S. embassy in Tehran, the Iranian-backed mass murders in Lebanon, and the declared promise of the Khomeini mullocracy to wage perpetual war against the West, our government adopted a policy much like the one we followed in helping a mass-murdering Soviet Union destroy Hitler in World War II, or in helping the odious *mujahideen* to eject Russian imperialists from Afghanistan in the late 1970's.

Second, recent studies of our military aid to Saddam Hussein show that only a small fraction of Iraq's overall pre-1991 arsenal was purchased from American arms dealers. That is nothing to be proud of, but it remains an interesting fact in light of the world's silence toward France, Russia, Germany, China, and other countries that sold to Iraq the vast majority of its reconstituted munitions post-1991, and until fairly recently.

Chris Shannon, implying that I use the same tactics as a now discredited *New York Times* writer, suggests that my reference to an editorial in the London *Guardian* was somehow unfair. He then refutes his own quibble by supplying additional quotes from the *Guardian* that amplify its indefensible comparison of Israeli actions in Jenin with the attack on the World Trade Center. He could better have spent his time examining why the *Guardian*, along with the *Evening Standard*, the London *Times*, the *Independent*, and other British and European papers, simply lied about both the details and the motives of the Israeli incursion—a strike that was far more measured and humane than other such interventions in Grozny, Serbia, and Mogadishu. Mr. Shannon apparently does not get it: despite what the *Guardian* says, there is absolutely no moral comparison to be drawn between the mass murder of 3,000 civilians by terrorists in peacetime and a nation's exercise of its sovereign right to deploy its soldiers to hunt down the agents of mass murder during a period of war.

I thank Staff Sergeant Greg J. Babiarz for his kind words, and in common with other Americans express my gratitude for his military service to the United States and the deep sacrifices he has made on behalf of all of us.

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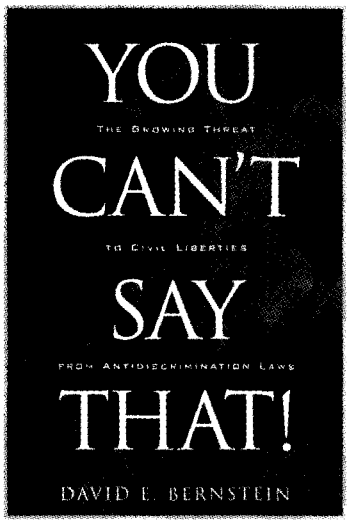

You Can't Say That!
The Growing Threat to Civil Liberties from Antidiscrimination Laws

David E. Bernstein

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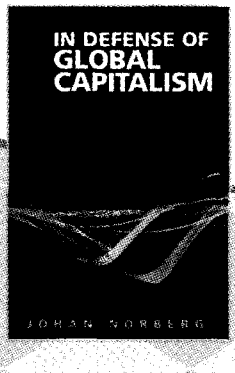

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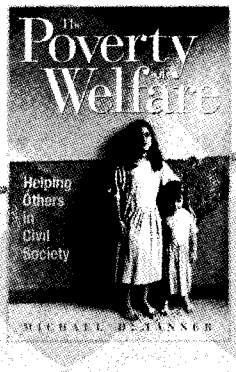

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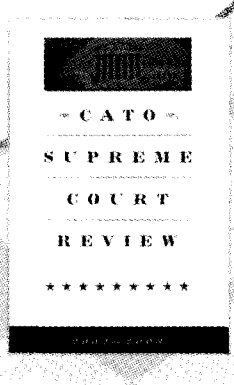

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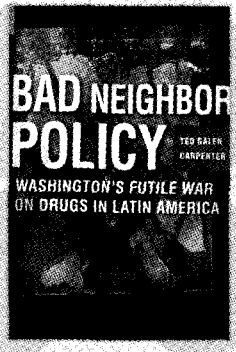

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Affirmative Action

TO THE EDITOR:

Jonathan Kay hits the nail on the head in "The Scandal of 'Diversity'" [June]. The argument that there are some unquantifiable "educational benefits that flow from an ethnically diverse student body," as Justice Lewis Powell put it in 1978, is clearly a fallacy. But suppose it were not. Suppose diversity fostered higher learning and increased test scores. Even so, the policies favored by the University of Michigan would still be unconstitutional. There is no "diversity exception" to be found in the Constitution, and a factually unsupported throwaway line by Justice Powell in the *Bakke* decision should not be used to overhaul that entire document. The appeal to "diversity" is simply a not-so-subtle way to evade constitutionally prohibited race-based admissions.

Even more baffling to me as an American Jew is the support of so many Jewish organizations for such discriminatory policies. Joining in the amicus brief in favor of the University of Michigan's admissions policies were, among others, the Central Conference of American Rabbis, Hadassah, the American Jewish Committee, the National Conference for Community and Justice, the National Conference of Jewish Women, the Progressive Jewish Alliance, and the Union of American Hebrew Congregations. Why would these organizations support policies that may directly harm Jewish sons and daughters? Perhaps Mr. Kay could shed some light on this.

DAVID EPSTEIN
New York City

TO THE EDITOR:

Since I am beginning my studies at Yale Law School this fall, I read Jonathan Kay's article with great interest. His conclusion—that an enormous price is paid for the privileges conferred by affirmative action—holds even greater urgency now that the Supreme Court's decision has come down in the University of Michigan Law School case.

By upholding an admissions policy in which, as the lower court said, "race is worth over one full grade-point of college average or at least an eleven-point and twenty-percentile boost on the LSAT," the Supreme Court has bought bad policy for a princely sum. This price is paid not only by those who are traded off in the admissions process but by society as a whole. This is because the concept of "diversity" demands that we cross the fine line between statistical trend and racial stereotype, presuming the child of wealthy black professionals to be more attuned to the needs of poor blacks than the child of poor whites who grew up in a racially mixed community. Instead of regarding all individuals as equals before the law, racial preferences treat all individuals as equals only among members of the same race: one black person's experience of discrimination, the assumption goes, will be more or less the same as another's.

As Mr. Kay demonstrates, this suspension of disbelief leads inexorably into intellectual dishonesty. The Supreme Court, in its recent decision, may have led us from dishonesty into injustice.

TARA HELFMAN
Flushing, New York

JONATHAN KAY writes:

Jews account for about 2 percent of the U.S. population. By my observation, their proportion of the student body at Yale Law School was ten times that. This level of "over-representation" is typical of other elite law schools, and of Ivy League campuses generally. In fact, the available data suggest that at least one in ten of the minority applicants who gain preferential entry to highly selective colleges, post-graduate programs, and professional schools in this country do so at the expense of a better-qualified Jewish applicant.

David Epstein asks why so many Jewish organizations support policies that may directly harm their constituents. In part, the answer is simply that Jews tend to be more liberal than American voters at large, and the policies of Jewish organizations reflect this fact. On race issues in particular, many community leaders remain faithful to a political alliance struck between blacks and Jews a century ago. The affinity between the two groups had a cultural aspect: both Jewish immigrants and religious blacks saw parallels between the story of Exodus and the end of modern slavery. Being disproportionately drawn to left-wing politics, many Jews also tended to view blacks through the prism of class struggle—an attitude comically epitomized by Alvy Singer's father in Woody Allen's *Annie Hall*, who defended his black cleaning lady against accusations of theft by insisting that "she's a colored woman, from Harlem! She has no money! She's got a right to steal from us! After all, who is she gonna steal from if not us?"

The two groups were also bound together by specific political goals. Both opposed white, Christian prejudice, and had much to gain from the emergence of a meritocratic society in which people were judged not on the basis of their faith or skin color but by the content of their character. The fight against anti-Jewish quotas in universities and the fight to end southern segregation were, in this respect, one and the same.

Once the great battles of the civil-rights era had been won, however, the political bond between the two groups began to break down. When the entrenchment of the merit principle failed to deliver its promised benefit to blacks, liberals agitated for a different kind of discrimination. The resulting preferences and quotas have vitiated the race-blind ideal for which Jews and blacks once fought arm in arm.

Thanks to class-based guilt and sociological habit, many Jews have not yet broken ranks with blacks over affirmative action. Eventually, I believe, that will change, especially as more Jews rethink their attachment to the Democratic party and the race-conscious polices it promotes. As for affirmative action itself, its days may be numbered as well. While I am disappointed by the Supreme Court's decision in the University of Michigan Law School case, I am at least cheered by the Court's expectation that "25 years from now, the use of racial preferences will no longer be necessary to further the interest [in diversity] approved today." As others have noted, this is about as close as the Supreme Court comes

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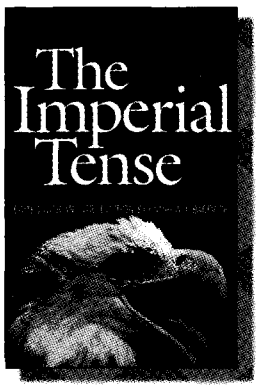
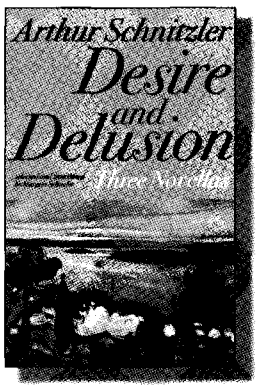
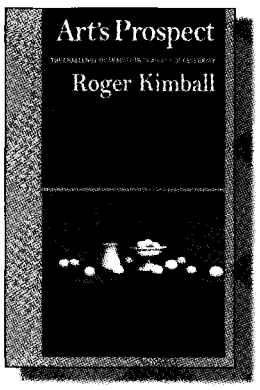
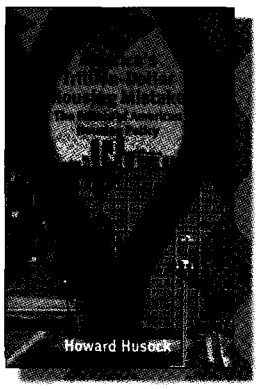
Antidotes to claptrap.









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to setting an expiration date on one of its opinions.

I was also gratified to see that some of the arguments cited in my article were echoed in Justice Clarence Thomas's powerful dissent. Unlike the Court majority, Thomas was unwilling to swallow the University of Michigan's claim that maintaining a "critical mass" of enrolled black and Latino students amounts to a "compelling state interest." Indeed, he showed that the educational advantages ascribed to a "diverse" environment are far more dubious than university educators would have us believe. Fittingly, his citations included the recent Rothman, Lipset, and Nevitte study, which, as I noted in my article, found that student satisfaction and perceived educational quality varied *inversely* with the proportion of enrolled African-American students.

"The Law School tantalizes unprepared students with the promise of a University of Michigan degree and all of the opportunities that it offers," Justice Thomas writes in one particularly strong passage, and he continues:

> These overmatched students take the bait, only to find that they cannot succeed in the cauldron of competition. . . . Indeed, to cover the tracks of the aestheticists [Thomas's term for those who prize chromatic diversity over nondiscrimination] this cruel farce . . . must continue—in selection for the *Michigan Law Review* . . . and in hiring at law firms and for judicial clerkships—until the "beneficiaries" are no longer tolerated.

In her courses at Yale Law School, Tara Helfman will undoubtedly come to observe first-hand the truth of Justice Thomas's words.

Rebuilding

TO THE EDITOR:

I write to applaud the sanity, wisdom, and courage of Michael J. Lewis's critique of the new World Trade Center design ["Into the Void with Daniel Libeskind," May]. As someone with three decades of experience as an architectural historian of the modern era, specializing in the theme of memorials and symbolic space, I would supplement Mr. Lewis's comments with the following basic principles:

1. Avoid "zoot-suit architecture." Over 2,000 years of architectural history teach that extravagant-looking buildings, like the Victor Emmanuel monument to Italian national unity in Rome, become embarrassments in the eyes of succeeding ages. Nobody should be cowed by criticism or ridicule of less flamboyant architecture—even if it comes from the prestigious pen of the *New York Times*'s Herbert Muschamp.

2. Avoid literalness. I can think of several ways, all extrapolating from the lessons of architectural history, to recall the presence of the vanished World Trade Center buildings without literally retaining the open space of the site that remained after their destruction. Maya Lin's Vietnam Veterans Memorial in Washington—a descent gently sloping a few feet into the ground—reminds us that a deep hole in the earth is not necessary as a memorial gesture.

3. Heal the city. The World Trade Center's superblock has always been a problem. The history of architecture teaches that well-knit street fabrics are always the most satisfactory. We should not permit a terrorist act to perpetuate an ill-considered disruption to the city grid in order to memorialize the lives lost. That worthy goal can be achieved in many other ways.

4. Heal the soul. The ancient Greeks sensed that groves of trees readily become sacred places, mysteriously harboring a very real sense of spiritual presence. Western landscape design over the last two centuries has used some form of a park or grove as the ideal condition for cemeteries or memorials. Architecturally, it behooves us to recall that this time-honored solution can be given a compelling, modern form, as witnessed by the winning entry for the 9/11 memorial at the Pentagon.

RICHARD A. ETLIN
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MICHAEL J. LEWIS writes:

I thank Richard A. Etlin for his kind words as well as his sensitive and elegant principles for rebuilding the World Trade Center site. Since he wrote, there has been one positive development. In mid-July, the Lower Manhattan Development Corporation quietly downgraded Daniel Libeskind to "collaborating architect" for the project, and named David Childs of Skidmore, Owings & Merrill as design architect and project manager. Officially, this was to give the project an architect with extensive practical experience in the building of skyscrapers, but surely the widespread public dismay over Libeskind's design, and its peculiar philosophical and aesthetic underpinnings, played a role as well. Even as tamed by Childs, however, there is little likelihood that Libeskind's fractured towers will do much to heal either city or soul, as Mr. Etlin so poignantly asks.

Correction

In "Bellow's Progress" by Algis Valiunas [September], Saul Bellow is identified as the first living novelist to be included in the Library of America. In fact he is the second; the first was Eudora Welty, whose two Library of America volumes, *Complete Novels* and *Stories, Essays, & Memoir* were published in 1998, three years before she died—ED.

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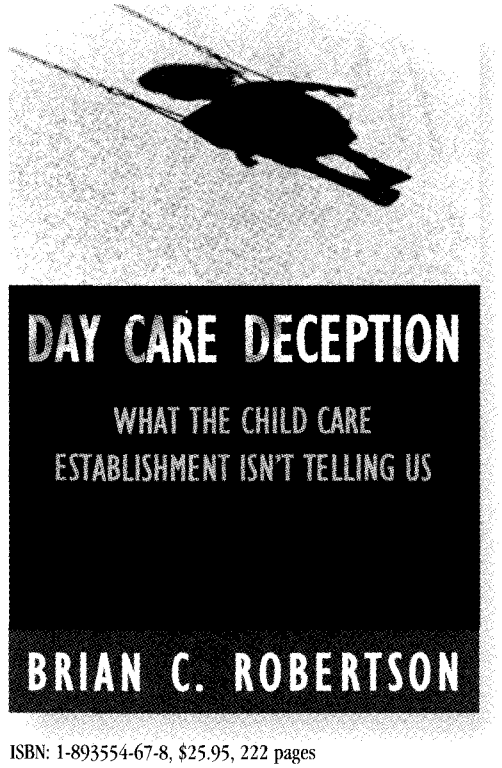

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THE CENTRAL ISSUES OF DAY CARE are often framed in a way that pits conservatives against liberals, working moms against stay-at-home moms, and feminists against traditional families. But the real conflict, Brian Robertson shows in *Day Care Deception*, is between all parents and the multimillion dollar day care establishment.

Robertson shows how this establishment works to expand its power and silence its critics. Although most reliable studies show that commercial day care has a negative effect on the emotional, psychological and even physical development of children, for instance, the day care lobby vilifies this work. It tries to silence researchers who call attention to the correlation between aggression among children and too much non-parental care. "Experts" employed by the day care industry dispute the most basic assumption of child-rearing—the mother's attention is *the* crucial factor in early childhood development.

Every year, as Robertson shows, the day care lobby pours more and more money into state and national elections, which is why politicians are beginning to provide more public subsidies for commercial day care at the very moment that parents are demanding options that would help them stay home to raise their children.

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CONTROVERSY

Watching China

Arthur Waldron & Critics

WE HAVE heard all this before, many times. Unfortunately, it does not become more convincing with the retelling. In "The Chinese Sickness" [July-August], Arthur Waldron conjures up the specter of a menacing China in the grip of an irredeemably evil regime, simultaneously threatening democratic neighbors and teetering on the brink of bloody disintegration. He argues that foreign politicians, businessmen, and scholars must discard their "Pollyanna-ish" and feckless view of China and embrace instead a new approach that acknowledges the regime's unqualifiedly despotic character and both anticipates and contributes to the political system's inevitable violent demise.

Mr. Waldron's argument has generated substantial attention; nothing can match the allure of an extreme argument unburdened by the complexities of the real world. Nearly all analysts recognize that the Chinese regime confronts major problems, including widespread corruption, and that Chinese behavior is often highly objectionable. Some also concede that the current Chinese regime might one day unravel. But estimates of China's future require a balanced and open-minded review of evidence and a recognition of the contingent nature of future trends. Instead, Waldron relies on unsubstantiated hyperbole, half-truths, and in some cases complete untruths that produce unwarranted, one-sided conclusions.

Space permits only a few examples. Mr. Waldron states that foreign investment in China has not produced any real returns, and that only coastal China has benefited from such investment. In actuality, foreign companies remit well over $20 billion in profits annually. Major corporations like General Motors, Kodak, Coca Cola, and Intel are reaping large profits in China, while many poorer inland areas continue to experience significant increases in living standards. More broadly, during the 1990's alone, China almost halved the proportion of its people living in poverty. Although the economy faces severe problems in banking, state-owned enterprises, and agriculture, it also exhibits signs of strength and resiliency, notably in the consumer, automobile, and housing sectors. And, in a recent article in the *Journal of Democracy*, Andrew Nathan, a highly regarded analyst of Chinese politics and no friend of Beijing, makes a convincing case for the resiliency of the Chinese regime.

Mr. Waldron's analysis of China's external behavior and views contains even more errors. He asserts that: America's security presence in Asia is "thin and diffuse"; Washington has always been and remains strategically unprepared in the region; China's past military actions in Asia prove that it desires to dominate the region; China will soon deploy nuclear missiles capable of "incinerating the continental United States"; Chinese foreign policy is driven solely by internal concerns; the Tiananmen massacre of 1989 triggered China's subsequent military modernization and a renewed emphasis on external threats; Chinese youth today are far more xenophobic and anti-American than in the past; and U.S. policy is based on the assumption that the Communist party will "always" govern China.

None of these statements is accurate. Although U.S. force levels have been strained by recent de-

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ployments to the Middle East, both air and naval capabilities in Asia will, according to Admiral Dennis Blair, the former head of Pacific Forces, soon return to very robust levels. More important, the Quadrennial Defense Review and the U.S. National Security Strategy confirm the depth and durability of the American regional security presence. Nor is China about to deploy modernized ICBM's in sufficient numbers to destroy the continental United States. China's nuclear deterrent remains based upon a capacity for limited retaliation against a small number of U.S. cities. This will likely remain unchanged even if its long-range nuclear arsenal grows in response to U.S. deployment of a ballistic-missile defense system.

Mr. Waldron refutes his own contention about the exclusively internal origins of Chinese external policy by his emphasis on the history of Beijing's strategic interactions with Japan, Russia, and the United States. China's post-Tiananmen military buildup resulted primarily from external—not internal—factors, including its military obsolescence compared with other major powers, a more antagonistic U.S.-China relationship, and the rapid emergence of pro-independence forces in Taiwan. One of the few serious surveys undertaken in recent years of Chinese views of foreign events suggests that China's youth are no more xenophobic or anti-American than their forebears. Finally, most serious scholars, businessmen, and government officials believe that the Communist party will eventually be compelled to share or even relinquish power, especially if China is to grow and prosper over the long run.

In all, the preponderance of evidence indicates that the Chinese regime is relatively stable at present, that its foreign policy is primarily motivated by rational national interests, that the U.S. government's engagement policy contains sufficient elements of deterrence, and that the U.S.-China relationship, although often unsteady, could witness real improvement. Yet ultimately, Mr. Waldron's argument about the fundamentally evil nature and inevitably violent fate of the Chinese regime is impossible to disprove. If the regime ultimately collapses, he will claim vindication; if it does not collapse, he can assert that it is still teetering on the brink; if it acts despotically or employs external coercion, he will again claim vindication; if it unexpectedly shuns such behavior, he will argue that it is biding its time, or is attempting to lull its adversaries into a false sense of security.

Mr. Waldron is not the first observer of the Chinese scene to build an argument on unfalsifiable declarations and distortions. But few have employed these methods in an apparent attempt to justify a dangerous policy of unqualified confrontation and subversion toward China.

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HENRY S. ROWEN:

Arthur Waldron offers a collection of truths, half-truths, and misconceptions. Among the truths is how the Chinese government's impulse for "secrecy, denial, and cover-up" was expressed in its handling of the SARS epidemic.

Many of Mr. Waldron's misconceptions are about economics, not his strong suit. For instance, he draws on Thomas Rawski's mistaken view that Chinese statistics greatly overstate reality. Rawski believed a decline in freight shipments in the late 1990's signified economic stagnation. Actually, changes in environmental regulations and in the economic structure reduced coal use, and therefore reduced coal shipments, which constituted a large share of all freight carried. Throughout this period, the economy boomed. If one does not believe that, go take a look.

As for official exaggerations, Stanford's Lawrence J. Lau has studied Chinese accounting methods and his analysis yields a growth rate about one percentage point lower than the official numbers. So growth of 11 percent a year in GDP becomes growth of 10 percent, which is still a remarkable performance to have sustained for more than twenty years.

Mr. Waldron says that investors do not know what returns they will get, although he acknowledges that money is being made by shipping goods to China for re-export. Precisely.

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Moreover, much money is exported from inside China only to return as "foreign" capital. Investors pouring in these funds might lose their shirts some day, but they are well-informed. The credibility of an American academic who claims he knows better than they do is questionable.

Mr. Waldron mentions one real problem: the bad loans of Chinese banks. As usual, the numbers matter, but here his article is uninformative. Assuming that most such loans are unrecoverable, Lau estimates that they amount to about 30 percent of GDP. If all of them were added to the current public debt, the grand total would come to about 60 percent of GDP. This is pretty good by international standards. (Japan's debt-to-GDP ratio is 140 percent.) The bad-loan problem will become a crisis if not stopped, but a crisis is not imminent.

Mr. Waldron says that China has carried out none of the reforms that the Russians have, with the result that "the life of the Russian people has improved immeasurably." But on the important indicator of life expectancy, the Russians have experienced a marked decline while Chinese life expectancy continues to increase.

Deng Xiaoping's view is worth noting. He gave Secretary of State George Shultz his opinion of Gorbachev's reforms in July 1988: "He's got it backwards. He opened up the political system without a clue about the economy. The result is chaos. I did it the other way around, starting in agriculture and small businesses, where opening up worked, so now I have a demand for more of what succeeds." As for a political opening, Deng's view was that "that will come later and will start small, just as in the economy. You have to be patient but you have to get the sequence right."

Quoting the Australian expert Robyn Lim, Mr. Waldron makes much of China's belligerency abroad and infers that China wants to be a hegemon. But whence might come the damage he expects? Taiwan, backed by the United States, is always a candidate, as are the Sino-Indian tensions that Mr. Waldron makes much of. These conflicts continue to simmer, but it seems that neither side is looking for trouble now.

North Korea is a much more serious source of danger. Mr. Waldron rightly argues that the Chinese seem not to grasp the threat posed by Pyongyang's nuclear program, and argues that if China does not take the lead, its northeast neighborhood will become the source of much trouble. So far, this case shows a paucity of China hegemony, so to speak, rather than too much of it.

Mr. Waldron asks if the Chinese polity will evolve or crash. He expects a slow-motion crash to start soon—one that will shake the world. Any autocratic state is susceptible of disruption, and there is no good reason to exempt China from the rule. But there, as elsewhere, it is hard to know when and how large political changes will occur. One welcomes those souls brave enough to make short-term predictions, for their grades as forecasters are recorded soon enough.

Stanford University
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DAVID M. LAMPTON:

In "The Chinese Sickness," Arthur Waldron fails to advance knowledge of China, illuminate American interests, or realistically assess the range of options facing the United States. His article undermines its own credibility by its single-minded focus on systemic defects in the People's Republic of China (which are legion) while excluding discussion of some of the system's strengths. It is the multifaceted character of today's China and the mix of gigantic problems and considerable successes that make it imprudent to forecast China's future dogmatically or to speak in absolutes about the best course for American policy.

And speaking of policy, Mr. Waldron's concluding summary sentence anticipating a collapsing PRC and an unprepared America ("The test is coming soon, and the time to prepare grows short") gives no guidance as to how America might positively shape outcomes in China or how Washington should prepare for the eventuality he postulates. Moreover, he is silent about what China's collapse would mean for East Asia or the rest of the world.

"The Chinese Sickness" adopts the old polemical ploy of throwing up so many dubious and unsupported assertions that one is paralyzed by the plethora of possible targets and the short time for target selection. I will take aim at three.

First, China is painted as a country surrounded by increasingly alarmed neighbors. True, some of China's neighbors are indeed concerned about the economic and security implications of China's rise, and Mr. Waldron appropriately cites things Beijing has done to ignite these anxieties. What we fail to learn from him, however, is that much of Asia also sees great economic opportunities in China, that much of Asia is fitting into a regional division of labor with China, and that on the most dangerous security issue outside the Middle East—North Korea—Beijing has been working cooperatively with Washington. Furthermore, China now has more peaceful and more settled borders with its fourteen land neighbors than it has had in the last 200 years. In short, the picture is not monochromatic, and there is reason for optimism as well as for vigilance. Most importantly, none of the major countries in Asia wants the U.S. to force it to choose between Beijing and Washington.

Second, Mr. Waldron takes gratuitous shots at Bill Clinton's China policy while sparing five Republican Presidents (Nixon, Ford, Reagan, George H. W. Bush, and George W. Bush) from association with essentially the same policy. My point is not that Mr. Waldron is simply partisan or unfair. It is that he there-

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- **T** **Joachim Fest:** *Hitler: A Personal View* (55 min.)
- **U** **Jacob Bronowski:** *The Ascent of Man* (55 min.)
- **V** **Milton Friedman:** *The Role of Government in Our Society* (58 min.)
- **W** **Groucho Marx:** *Fast Mind, Faster Mouth* (60 min.)
- **X** **Ludwig von Mises:** *Liberty and Property* (43 min.)
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by avoids asking a more fundamental question: why have the last seven U.S. Presidents (two Democratic and five Republican) pursued a policy of integrating China into the world, fostering economic growth there, and encouraging gradual social and political change? There are many answers to this question, but among them is the fact that there has been enormous, positive change in China since 1978, while the costs of social instability for the Chinese people, the region, and the world would be horrendous.

Finally, there is Mr. Waldron's inappropriate comparison of the current PRC regime with the Qing dynasty (1644-1911/12): "a combination of external belligerence and internal weakness is making the People's Republic look more and more like the once-mighty Qing at the point of entering its period of terminal decline." Aside from the fact that corruption was a huge problem for the Qing as it is today, the analogy breaks down on several fronts. The Qing was highly resistant to voluntary involvement in the international economic system. The PRC, on the other hand, is among the world's ten largest trading economies and received more foreign direct investment in 2002 than any other nation on earth, including the United States.

Moreover, because it was culturally distinct from the Han population it ruled, the Qing elite aroused Chinese nationalism against itself. By way of contrast, the PRC elite relies on Chinese nationalism for its support. And the late Qing was neither a technocracy nor a meritocracy; today's China has a considerable way to go in these departments, but it aspires to be both.

In short, if Mr. Waldron is right, he gives us no guidance about what to do—and if he is wrong, as I believe him to be, he is just plain wrong.

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JONATHAN D. POLLACK:

In "The Chinese Sickness," Arthur Waldron diagnoses the Chinese body politic and declares its illnesses to be terminal. He foresees the inevitable demise of Communist rule in China, with Western governments "even less aware and less prepared [for the looming crisis] than they were in the Soviet case." Though he does not offer predictions of when the regime will unravel, he expects it to be sooner rather than later, and that the end will very likely be violent and extremely dangerous.

I do not propose to rebut Mr. Waldron's characterizations of China's present condition, its threats to its neighbors, and its almost certain demise. Instead, for the sake of argument, I will address the policy implications of his assessment. How does he propose to prepare for the collapse of Communist rule? Alas, this is where Mr. Waldron seems far less nimble and self-assured. He does not offer a clear prescription, so it is necessary to infer possible courses of action from his analysis.

Four strategies are discernible in his remarks, two of which I believe he rejects as wholly inadequate. The first is current U.S. government policy, generally labeled as engagement, which posits that Beijing can be successfully integrated into international institutions while its leaders undertake a step-by-step departure from the Communist era. Mr. Waldron seems to see this strategy as a fool's errand. The second strategy is "muddling through," thereby seeking to manage change and potential eruptions, without an expectation that a future crisis will be life-threatening. Mr. Waldron seems to regard this path as far too inertial and overly optimistic, leaving the United States ill-prepared for more extreme possibilities.

Ineluctably, therefore, Mr. Waldron is drawn to activist courses of action. Under a third path, the United States could emphasize crisis control and consequence management. We would prepare for the inevitable catastrophes that await China, thereby mitigating or avoiding outright disaster. This would presumably include high-level contingency planning within the U.S. government, possibly even plans for American military intervention in especially dire circumstances. A fourth path would take the third approach to its logical conclusion by removing the Chinese patient from life support. Under this approach, the United States would no longer deem the PRC a legitimate, sovereign government, and Washington would seek to accelerate the end of Communist rule in China.

I do not think I am mischaracterizing Mr. Waldron's analysis. If conditions are as dire as he describes them to be, how could a farsighted U.S. government sit on its hands and wait? Mr. Waldron offers some ideas on what America should do once the death rattles are first heard, but not on what America should do *now*, while there is presumably time to limit the damage and control the risks. Would he advocate de-recognition of Beijing, and restoration of relations with Taipei? Would he advise that Washington urge U.S. multinationals to withdraw from China? Would he advocate a U.S. trade embargo? Would he propose that we remove the terrorist label from the East Turkestan Islamic Movement, and instead deem the group to be freedom fighters? Indeed, in view of the extraordinary pressures on U.S. military resources, would he recommend that we redeploy forces presently assigned to Iraq, Afghanistan, and Central Asia so that we might be better prepared to address highly worrisome contingencies involving China? Would he urge immediate consultations with China's neighbors to diminish the more extreme consequences of the collapse of Communist rule, or should we simply exit East Asia and let the region confront the unraveling of the Chinese state on its own?

Mr. Waldron has done COM-

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Why Do So Many Believe The Myth That People Are Born Homosexual?

In our experience treating hundreds of homosexually oriented men, we have seen the unmistakable influence of developmental experiences in the formation of homosexual thoughts and impulses.

We have observed, among other things, peer labeling, early initiation into homosexual behavior, and problematic family dynamics where, for example, a boy's mother is too emotionally intertwined with him and his father is distant. Further, and tragically, many boys are sexually molested, and many of us have observed that upon reaching adulthood, a great percentage of these boys—significantly greater than the societal average—become actively homosexual or struggle with unwanted homosexual thoughts and desires.

Still, children are being told that homosexuality is genetic and that their homosexual thoughts and desires are "who they are." They were, it is said, "born that way." (If so, then why do such a great percentage of boys who have been molested grow up to struggle with homosexuality?)

Read what gay activist and researcher Dr. Simon Le Vay says. He is the author of the famous hypothalamus, or "gay brain" study that many have cited to argue that homosexuality is genetic:

"It's important to stress what I didn't find. I did not prove that homosexuality is genetic, or find a genetic cause for being gay. I didn't show that gay men are born that way, the most common mistake people make in interpreting my work. Nor did I locate a gay center in the brain." (David Nimmons, March, 1994, *Discover*, "Sex and the Brain," Vol. 15, No. 3, p. 64-71)

And, in a related area, Camille Paglia, lesbian writer: "Homosexuality is not 'normal.' The ten percent figure, servilely repeated by the media, was pure propaganda, and it made me, as a scholar, despise gay activists for their unscrupulous disregard for the truth." (*Vamps and Tramps*, Vintage Press, NY, 1994)

It is only decent to be honest and clear when presenting an understanding of homosexuality, as this understanding can so affect an individual's personal psychological deveopment, mental health, and life choices.

Homosexuality is neither inborn, nor benign, nor unchangeable. If you want information about the process of growing out of homosexuality, or its prevention, please contact us. Further, we ask that you not take at face value what has been promulgated as regards this issue, but visit our websites and look into the matter yourselves.

National Association for Research & Therapy of Homosexuality (NARTH)
consists of mental health professionals, researchers, and others whose goal is to make effective treatment available to those who wish to change their sexual orientation.
www.narth.com Phone: **818-789-4440**

Jews Offering New Alternatives to Homosexuality (JONAH)
offers services to the world-wide Jewish community for the treatment of unwanted same-sex attractions.
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MENTARY readers a disservice: he has painted the bleakest of futures, but he has not told them what he thinks we should do to confront these supposed realities. I await his policy recommendations.

U.S. Naval War College
Newport, Rhode Island

JOHN J. TKACIK, JR.:

Arthur Waldron has written a perceptive and valuable analysis of the problems and crises besetting China. His prognosis for "The Chinese Sickness" is somewhat more pessimistic—or perhaps optimistic—than my own. China's economic performance has certainly been exaggerated, and although his own figure of $250 billion a year for China's total foreign trade is less than half of the official Chinese figure for 2002, it is probably close to the true trade picture—minus the foreign-owned export-processing sector, which imports vast amounts of components and re-exports the finished goods, with foreign factory owners, not Chinese workers, pocketing the difference.

Flouting its trade commitments, the Chinese government pressures foreign firms to invest in ever higher-tech production lines by granting China-produced high-tech commodities almost full rebates from the hefty value-added taxes that weigh down imports. China levies a 17-percent VAT on foreign semiconductors, but offers a rebate that makes local chips vastly cheaper than imports—regardless of the fact that importing chips is far less expensive than building billion-dollar chip-fabrication factories in China. China has surpassed the United States as the world's leading consumer of aluminum. And China's oil demand in 2002 averaged 5.36 million barrels a day, more than Japan's 5.34 million barrels and second only to the United States' daily demand of 19.7 million barrels. Even if there is puffery in the statistics, China is clearly an economic powerhouse.

As Mr. Waldron notes, the regime's post-Tiananmen bargain with the Chinese people was "you let us rule and we'll make you rich," and the Communist party seems to be keeping its part of the bargain—at least in the large coastal cities. But it also struck another bargain—with the army. In January 1992, Deng Xiaoping redefined socialism by declaring that "whatever increases the 'comprehensive strength of the nation' is socialism." "Comprehensive strength," he explained, is China's overall influence, particularly in military and strategic terms. Indeed, Deng's pronouncement was followed by the Chinese military's vow to "protect and shepherd the policies of [economic] reform." My own research indicates that the People's Liberation Army is the primary mover—and one of the top financiers—of the push to get a foreign-equipped semiconductor infrastructure established in China. Pentagon estimates that China's military budget nears $65 billion annually (again, second in the world only to the United States) do not count the spending in dual-use industrial infrastructure investments.

All things considered, I am less sanguine than Mr. Waldron that, in time, China will fall apart.

Heritage Foundation
Washington, D.C.

WILLIAM E. ODOM:

Arthur Waldron provides an excellent antidote to the conventional wisdom on China. He is right that China is headed for a major domestic political crisis and exceptional for calling attention to future Chinese-Japanese competition. At the same time, he may underestimate the wealth China has created thus far and the degree of its diffusion.

Let me reinforce his conclusion with a different line of analysis. The "totalitarian" regime-type, defined by Carl J. Friedrich and Zbigniew Brzezinski in the 1950's, found its original embodiment in the Soviet Union and to a lesser extent in Nazi Germany. After World War II, the Soviet variant became a recipe book, not only for Soviet-controlled Eastern Europe but also for China, North Korea, and, later, North Vietnam and Cuba. In the minds of many Western observers, however, the process of de-Stalinization that began under Khrushchev threw doubt on the utility of the totalitarian model for understanding these states, especially the Soviet Union.

This is unfortunate because the model has remained the best guide to understanding the demise of Communist states (and also "national socialist" states). According to the model, the system's internal dynamic brings decay of two kinds: a vast squandering of resources through the command economy, and political and moral decay through endemic corruption, cheating, and other deviant behavior when leaders cease using bloody purges to revitalize commitment to the regime's ideology. De-Stalinization served only to accelerate decay, not the political transformation that many Western scholars believed.

The Soviet Union would exist today had Gorbachev resorted to repressive purges and resisted reforms. North Korea's economy is much weaker than the Soviet economy was, but the regime has not collapsed precisely because its leader is ruthless and opposed to reform. Thus far, every time a Communist country has attempted a transition to a different regime-type, it has collapsed. The exception seems to be China. But is it really an exception?

Soviet-type institutions, especially those characteristic of its command economy, never penetrated as deeply into Chinese agriculture—the largest sector of the economy. Thus, traditions from the pre-Communist era have survived to promote better economic performance in some areas (especially agriculture and small commerce) than had been the case in the Soviet Union. But there is no pre-Communist liberal political tradition in China, as there was in Japan, Taiwan, and South Ko-

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An Independent Palestinian State

Would it be a peaceful neighbor of Israel or would it lead to war?

President Bush, prodded by the "international community" and in order to appease the Arabs, who are furious about our war against Iraq, has designed a "Road Map" for the Middle East, aided by the "quartet" of the U.N., the European Union and Russia. At the end of that road, presumably in 2005, an independent Palestinian state would arise as a peaceful neighbor of Israel.

What are the facts?

An aura of inevitability. The concept of a Palestinian state, which has by now acquired an aura of almost inevitability, is a fairly new and quite unjustified one. It is unjustified because there are no distinct "Palestinian" people—they are the same Arabs as those of Lebanon, Syria and Jordan. The concept of a Palestinian state came about after the Six-Day War in 1967. It is the product of unrelenting Arab propaganda and insistence. A Palestinian state never occurred to the Ottomans who ruled the area until their defeat in World War I, nor to the British when they had the mandate over Palestine until 1948, nor to the Jordanians who ruled the "West Bank" from 1948 to 1967. George Bush (father) declared "...In accordance with U.S. traditional policy, we do not support the creation of an independent Palestinian state." It is therefore difficult to understand why his son, our current president, would declare that it was "...a vision of longstanding U.S. policy to create a Palestinian state west of the Jordan River."

The thought that a Palestinian state next to Israel would be a peaceful neighbor is ludicrous. The stated purpose of the Arabs, endlessly repeated and never excised from their "covenant," is to acquire whatever territory they can, in order to use it as a base for the final assault against the Jewish state and for the hoped-for extinction of the hated "Zionist entity" once and for all. Even ten years after the ballyhooed Oslo Accord, the Palestinian Arabs still proclaim that "Palestine" would extend "from the river to the sea," which means that Israel would cease to exist, would be destroyed and absorbed by the new "Palestine." The State of Israel does not exist in Palestinian or any other Arab school books or on their maps. Tel Aviv does not exist. The Jewish holy places do not exist. The "West Bank" and Gaza are only the first step. They want it all!

"Palestine" demilitarized? Many, even those who concede the unrelenting hostility of the Arabs, contend that Israel would be in no existential danger from a Palestinian state because it could be made a condition of its creation that it be demilitarized, for a number of years or perhaps even forever. But those who propose that, know better, of course. Even today, as the Palestinians are under the severe weapons restrictions that they accepted in the Oslo Accord which allowed only a police force with light weapons, they have artillery, rockets, missiles and all kinds of heavy weaponry that they have smuggled into their territory. A ship laden with 50 tons of deadly weapons was intercepted by Israel in the Red Sea. Many shipments of arms have been intercepted in the Mediterranean; and there is a steady influx of arms through secret tunnels from the Sinai, which, in quest of peace, Israel has foolishly ceded to Egypt.

> House Majority leader Tom DeLay put it well when he said, "I can't imagine this president supporting a state of terrorists... The peace plan is a road map to destruction."

But the heavy weapons that "Palestine" would inevitably acquire, despite all solemn covenants to the contrary, aren't really necessary. With an independent Palestine in control of the Judean ridges, and with Israel only nine miles wide at what would be its narrow waist, heavy weapons would not be required to make life impossible in the truncated and mortally vulnerable Jewish state. Katyusha rockets, one of the Arabs' favorite weapons, would cover virtually all of Israel—impeding civilian life, industry, civil and military aviation, and, in case it came to that, mobilization of troops. The one million Arabs living in Israel as Israeli citizens would be a convenient and deadly fifth column, ready to spring into action. Israel would, of course, respond to any such attack. That would inevitably result in a major war, a war that would ultimately set the entire region on fire and would undoubtedly involve weapons of mass destruction, including nuclear ones. How can the world, how can the United States possibly promote such a project?

The Arab world is presently comprised of twenty-two states of nearly five million square miles and of one hundred forty-four million people. The greater Islamic world contains forty-four states with one billion people. Israel, with five million people, is smaller than Lake Michigan, smaller by half than San Bernadino County in California. There seems to be no need for another Moslem/Arab state, especially one that would certainly serve as an advance base for the ultimate destruction of Israel, the state of the Jews. How the President would promote the creation of a terrorist state, a state that without question would become a mortal enemy of the United States, and how he would countenance the inevitable destruction of the Jewish state, the only loyal ally of the United States and its only strategic asset in the area, is incomprehensible. House majority leader Tom DeLay put it well when he said, "I can't imagine this president supporting a state of terrorists... The peace plan is a road map to destruction."

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rea, where it served to facilitate industry and finance. And even Mejii Japan, which imported liberal institutions from Europe, eventually collapsed in the 1930's. Japan only had to deal with a ten-year hiatus in liberal institutions. All the objective factors thus suggest that the present Chinese regime will not achieve a liberal institutional breakthrough. Chinese economic performance has helped stave off a crisis, but it cannot be sustained without change that will provoke one.

Many students of Gorbachev's *perestroika* believe the political collapse of the USSR was avoidable without stopping reform. None of them, however, has offered a cogent explanation of how such a miracle could have been achieved, although several have provided platitudes. The evidence for China drives us to the same conclusion--there is no way out, only a breakdown or long-term stagnation.

Mr. Waldron's policy warning—that the United States needs to prepare for the crisis—is difficult to reject, but what preparations make sense? Talking to regional leaders within China, as he recommends, may be useful, but that is only a tactic. What is needed is a regional strategy.

Let me suggest a broad one that starts with a recognition that we cannot do much to affect Chinese developments. More urgent is to apply the analysis offered above to North Korea and to recognize that a "soft landing" through reforms there—South Korea's hope—is daydreaming. A political crisis in Pyongyang will likely come before one comes in Beijing. Rather than prepare for it, the United States has been focusing entirely on North Korean nuclear weapons while ignoring the strategic significance of the North's impending collapse.

If Washington fails to manage the political crisis on the Korean peninsula successfully—achieving reunification under the South Korean government and retaining U.S. troops there to prevent a nuclear competition between Japan and Korea—it will do very badly at managing the region's biggest future problem, namely Japanese-Chinese strategic competition. In other words, Korea is the most *urgent* issue facing U.S. strategy, while Japanese-Chinese strategic competition is the *largest* issue.

Mr. Waldron's clear-eyed analysis makes it easier to see one's way to this wider strategic view. He is to be congratulated for it.

Hudson Institute
Washington, D.C.

JAMES R. LILLEY:

With his profound grasp of Chinese history and his insights into what is happening today, Arthur Waldron has pulled aside the curtain and exposed the Wizard of Oz feverishly manipulating the levers to project an image of Chinese unity and power.

The spin pouring out of China tells us that 25 percent of the world's cranes are in Shanghai, that China's economic growth rate is at 8 percent, and that China has over $300 billion in foreign-exchange reserves. And if that is not enough, look at those skyscrapers in Pudong. The truth, however, is that rural unrest, massive corruption and disparities of wealth, and archaic systems of production and distribution have clogged China's arteries. The patterns of Chinese history tell us that, without significant reform, the current dynasty will face escalating problems that could challenge its stability.

Pointing all this out, Mr. Waldron suggests some bleak scenarios for the future, based in part on recent analyses by Ross Terrill and Robyn Lim. I would suggest that China is already making some adjustments, domestically and internationally, to assure its survival. And it is acting none too soon, as its projections of power have landed it in hot water with its neighbors. Thus, its seizure of the Paracels in 1974 from South Vietnam has recently issued in the first U.S. naval visit to Saigon in 30 years. Its heavy-handed attempts to influence Taiwan's presidential elections in 1996 and 2000 with threatening rhetoric and demonstrations of military might resulted in victories for the candidates Beijing was trying to defeat. Most importantly, in North Korea, where in the 1990's China stood on the sidelines and watched the tigers fight, shoving the nuclear problem onto the back of the United States, a nuclear crisis has evolved that directly threatens the PRC's vital national interests—even as Beijing continues to pour aid down the black hole of North Korea's failed economy.

Mr. Waldron sagely observes that we will know major change is afoot when elements of the Chinese regime lobby for our support against other elements. I agree; we have seen this before, as when Deng Xiaoping sought our support against the radical Gang of Four. We showed our preference, and Deng eventually prevailed. Less successfully, we once supported the forces of Chiang Kai-shek against the Chinese Communists. And yet today the result is the democratic regime in Taiwan, whose example holds out a certain hope for the future. China and Taiwan's economic fortunes are becoming more interdependent, and China's coastal areas are beginning to resemble the Taiwanese model of development. Might this be a sign of things to come? War, after all, is not good for business, and listening to the voice of the people is not always a bad thing.

American Enterprise Institute
Washington, D.C.

LARRY M. WORTZEL:

Just before the Tiananmen massacre, when the People's Liberation Army began to stage its infantry divisions for the assault on the innocent civilian demonstrators in Beijing, the first hints that blood would be shed came out slowly. Local residents saw the army's inexorable buildup, knew that people would

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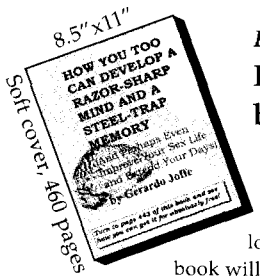

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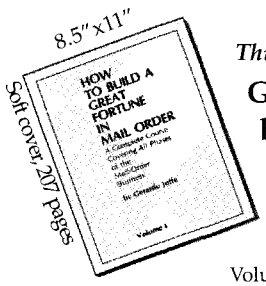

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die, and communicated that expectation to foreign residents in Beijing. It must have been like that during the Boxer Rebellion in 1900, which presaged the downfall of the Qing dynasty. Arthur Waldron tells us that the same thing will happen again when change comes to China.

Mr. Waldron believes that "we will learn about [change] because the Chinese will tell us, albeit only indirectly." He thinks that a "major" change will be afoot "when members of both the central and regional governments of the People's Republic of China start, in private, to lobby for [American] support against other members of their own government." As usual, Mr. Waldron has it about right. He realizes that the façade of normality and reform that is the face of Communist China is just that, a false front.

Underneath the façade of reported economic growth is a "shell-game" in which there is no pea under any shell. China has a hollow banking system, where people's savings are funneled as loans into bankrupt industries to pay salaries, while the people are also forced to buy bonds in the same industries. The banks are insolvent. Government agencies falsify their statistics in order to "maintain the illusion of [economic] growth," according to Mr. Waldron and Thomas Rawski, whom he cites. China's world-trade figures are at a record high in absolute terms, $250 billion a year; but measured against the percentage of world trade, the ratio for China today is about what it was in the 1920's.

Mr. Waldron concludes that the most likely outcome for China is that there will be some kind of crash. And, as with the Tiananmen massacre, he expects that crash to involve bloodshed. I think Mr. Waldron is right. Communist parties do not simply evolve themselves out of existence, nor do they surrender power voluntarily. The case of Mongolia notwithstanding (where the end of the Soviet Union led to free elections with no bloodshed), Communist parties are Leninist organizations that believe the average person is deluded by a "false consciousness" of what is in his political and economic interest. Instead of allowing for the articulation of political interests, Communist parties use violence and intimidation to impose their will on the populace. And in China, although the outcome can be postponed, the most likely result will be that the Communist party will go out kicking and screaming.

I differ with Mr. Waldron only on one point. I did not hear President George W. Bush say that the United States would do "whatever it took" to defend Taiwan, as Mr. Waldron states. What Bush said was more nuanced: "we'll do whatever it takes to help Taiwan defend itself."

Few people are able to analyze grand strategy, economics, politics, and history effectively. Arthur Waldron is one of them, and he is not afraid to make strong predictions. We are all in his debt for this stimulating article.

Heritage Foundation
Washington, D.C.

Arthur Waldron

STRIKING TO me is the extent to which my correspondents, even those whose tone is most negative, either agree with the central points of my article or fail to refute them. I began by saying that China's mishandling of the SARS crisis has implications beyond the field of public health. From this initial example I moved to two distinct sets of problems. The first involves misgovernment at home, ultimately rooted in the Communist-party dictatorship; the other, of similar origin, takes the form of threats to China's neighbors. Finally I argued that the convergence of both sets of problems would, before long, push the Chinese regime toward some sort of major change, possibly spelling the end of Communist rule but in any case likely to be abrupt and unexpected (though perhaps not inevitably bloody)—to which possibility we and our government should be paying much greater attention.

And what do my critics say? On the bungling of SARS, Henry S. Rowen finds correct my view that this demonstrates the "Chinese government's impulse for 'secrecy, denial, and cover-up.'" On internal problems, David M. Lampton concedes the "systemic defects in the People's Republic of China (which are legion)," while, regarding the worries felt by China's neighbors, he endorses my citing of the "things Beijing has done to ignite these anxieties." Jonathan D. Pollack, another critic, likewise declines to rebut my characterizations of China's present condition and future prospects. Even the joint communiqué from the twelve China specialists, whose tone I will address below, fails to take serious issue with my main contentions, instead treating them as common knowledge: "Nearly all analysts," write the twelve, "recognize that the Chinese regime confronts major problems, including widespread corruption, and that Chinese behavior is often highly objectionable." They even grant my point about regime change, wearily stipulating that "most serious scholars, businessmen, and government officials believe that the Communist party will eventually be compelled to share or even relinquish power."

But if regime change is likely, as "most serious scholars" allow, or even possible, then surely experts like the twelve, not to mention the rest of us, should be actively thinking about the when, the how, and the why. China is an immense country, and regime change there would be an event comparable in significance to the collapse of the USSR and the end of Communism in the West. Yet neither the group of twelve, nor Mr. Lampton, nor Mr. Rowen, nor Mr. Pollack has *anything at all* to say about this possi-

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bility, its modalities, or its implications. All of them, save Mr. Rowen, are China specialists. What do they spend their time thinking about, if not this biggest of all the big questions?

It is, indeed, a delicious irony that it falls to General William E. Odom to show my China-watching colleagues how the discipline of political science should be practiced. He does this by looking immediately to the larger picture—the one that forms the context for China today. Above all he looks at the collapse of the USSR, and from that event and the events in Europe at the end of the 1980's he draws a generalization: so far, it would appear that "every time a Communist country has attempted a transition to a different regime type, it has collapsed. The exception seems to be China. But is it really an exception?" Exactly the right question, it seems to me, but one which his fellow correspondents do not even raise, let alone attempt to answer.

Instead, they shrug their shoulders in dismissal, focus on a few minor areas of disagreement—and engage in vitriol. This is particularly true of the letter from the group of twelve, which garnered the endorsement of so many weighty and visible authorities. The explanation for the vitriol, I think, lies in the unwelcome situation now confronting sectors (though not all sectors) of the China-watching community. In brief, it is no longer possible to defend the largely upbeat views about China and its future that have been a standard establishment line for so long. What then to do? They will not or cannot say they were wrong; but neither can they or will they say that another view was right. What they can do is to argue *ad hominem*, accusing someone like me of "unsubstantiated hyperbole, half truths, and in some cases complete untruths that produce unwarranted, one-sided conclusions"—though without documenting the charge.

Those who remember the comparable intellectual scandal that afflicted the field of Sovietology during the period of the USSR's existence will recognize the phenomenon. In *Vixi*, his forthcoming memoir, Richard Pipes says something about the groupthink then dominating Soviet studies that applies equally well today to at least one group of China specialists: "That is not to say that there was no room for controversy; there was room but it was strictly circumscribed. Thus, for example, it was permissible to maintain that the Soviet regime was more stable or less stable, but not that it was unstable." Something about my analysis—something, perhaps, too candid—crossed the line of the permissible.

MY CRITICS do in fact disagree with me on a few points of substance. Thus, Henry Rowen points to "misconceptions about economics" that I have supposedly derived from the "mistaken" work of Thomas Rawski. It is true that economics is not my "strong suit," as Mr. Rowen helpfully adds, but my confidence in Rawski is not based merely on his reputation as a respected academic economist who also happens to be a superbly qualified China specialist. In his early work, Rawski turned on its head the conventional wisdom about pre-1949 China—that it was "economically stagnant"—and was proved correct. He is now in the process of doing the same for our understanding of the PRC, most notably by querying the high growth rates that have been claimed for it and tracking the burgeoning problem of resource misallocation. His work is painstakingly empirical, though not lacking in a certain intellectual adventurousness. Above all, his sources of information on that closed society include Chinese statisticians and economists who themselves know what they are talking about.

In his brief letter, Mr. Rowen manages to skate perilously close to self-contradiction—twice. Life expectancy is falling in Russia, he writes, but rising in China. This may or may not be true; but it escapes me how he can accept official statistics as his only evidence for the situation in China after conceding that the falsification of SARS statistics is a good example of the regime's penchant for "secrecy, denial, and cover-up." Are we to conclude that the penchant is limited to SARS? If anything, the SARS crisis should have taught us how little we and the Chinese government know about the most basic conditions in the Chinese countryside, where most people live.

Mr. Rowen's second near self-contradiction occurs when he refers unfavorably to "those souls"—like me, presumably—"brave enough to make short-term predictions," only to offer just such a prediction himself. Thus, he observes that China's "bad-loan problem will become a crisis if not stopped, *but a crisis is not imminent*" (emphasis added). How can he possibly know? This year, through July, bank loans in China expanded by 23 percent; known bad loans (which Standard & Poor's estimates at perhaps 50 percent) were thus rendered a smaller proportion of the newly expanded loan book—which does not look to me like stopping the problem. Nor can we tell what proportion of these new loans will prove bad. According to J.P. Morgan, as reported in the *Financial Times*, a total clean-up of China's banks could cost roughly $571 billion, or 47 percent of the 2002 Chinese GDP. That figure is for the state banks alone, and does not include the vast rural credit system, where bad loans are estimated at about 50 percent. How long can this situation be maintained? Exactly how imminent is imminent?

Finally, there is Mr. Rowen's quite remarkable invocation of Deng Xiaoping, the man who observed of Mikhail Gorbachev (an incomparably more humane and better educated man) that he had "got it backwards. He opened up the po-

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litical system without a clue about the economic system." But look at the results. After a difficult but nearly bloodless transition, Russia today is free of Communism, beginning to show signs of real economic as well as political, intellectual, and artistic life, and has a government that, if not completely democratic, is nevertheless immeasurably freer and more representative than China's.

And China? Mr. Rowen again quotes Deng, this time on political reform: "that will come later and start small, just as in the economy." In a sense, truer words were never spoken. For it is now very much later, Deng is in his grave, most of the world is democratic, and yet in China political reform has not even begun, even "small." Indeed, when Deng had an ideal opportunity to initiate such political change a quarter-century ago, he opted instead to unleash the People's Liberation Army to sack and terrify Beijing.

DAVID LAMPTON, even while acknowledging the defects of the PRC government and its responsibility for at least some of the unease now general in Asia, counters that China nevertheless presents a great economic opportunity. I do not deny that, though I would stress that war and economics are largely independent phenomena. Mr. Lampton also takes me to task for comparing today's China with the late Qing dynasty (1644-1912). This is sensitive territory in China: a popular Beijing-produced television series dealing with the years just before the end of the monarchy has recently been canceled, evidently because of the all-too-obvious parallels with today.

According to Mr. Lampton, "the Qing was highly resistant to voluntary involvement in the international economic system. The PRC on the other hand is among the world's ten largest trading economies." What I take him to mean is that when foreign gunboats arrived to force the Qing to trade, the monarchy resisted. But so did the PRC resist, not gunboats but voluntary trade. The whole point of Chinese Communism in its original form was to abolish foreign ("imperialist") penetration of the country's markets, which, it was believed, had led to the gradual impoverishment or "immiseration" of the people. The Communists acted on this diagnosis, systematically closing down every sort of foreign or foreign-related enterprise. The PRC had scarcely any foreign trade at all until the changes post-Mao.

How does the overall PRC record, starting in 1949, compare with that of the Qing? Back in the dark days of that last Chinese dynasty, native merchants (as well as the then-equivalents of "General Motors, Kodak, Coca Cola, and Intel") made money by selling tea and silk and porcelain and all manner of Chinese goods to the world. (Thoreau's simple bamboo lattice bed at Walden Pond came from China.) They ran up such a massive trade surplus that the West had to discover and impose the sale of opium in order to square things. The miracle is not, as Mr. Lampton seems to believe, that the PRC has made China into a great trading power; it is that, for nearly 30 years, the Chinese Communist government managed almost completely to prevent the country they ruled from trading, let alone becoming the powerhouse it could easily have been by the late 1950's when Japan, Hong Kong, Taiwan, Singapore, and the rest were beginning to take off.

NOW LET me turn again to the twelve and to the points on which we genuinely disagree. The two main areas are, first, the dimensions of the Chinese nuclear-missile threat to the United States and, second, the future American role in Asian regional security.

My statement that China is in the process of deploying nuclear missiles "capable, among other things, of incinerating the United States" evidently produced a shudder. Here is how the twelve put it: "China's nuclear deterrent remains based on a capacity for *limited* retaliation against a small number of U.S. cities. This will likely remain unchanged *even if its long-range nuclear arsenal grows in response to U.S. deployment of a ballistic-missile defense system*" (emphasis added).

What do they mean by the phrase, "a small number of U.S. cities"? Right now, China has perhaps twenty ICBM's capable of hitting this country. That could mean twenty cities, which, if we go in descending order of population, would take us from New York down to Boston and hold at risk a total population, in the metropolitan areas alone, of roughly 29 million. By 2010, at present rates of production, China may have 60 ICBM's capable of hitting the United States, which would get us all the way down to Newark (population about 268,000). I cannot tell whether twenty, or 60, thermonuclear detonations over the U.S. would be "limited" or, alternatively, constitute "incineration" as my academic colleagues understand those terms, but surely they will agree it would be quite a conflagration.

As for Asian regional security, on this the twelve follow their usual pattern of not *actually* disagreeing with what I wrote. They admit that U.S. forces in Asia are important to keeping the peace, and they do not dispute my observation that the U.S. presence now is "thin and diffuse." Their tack is to assert that things will get better in the future: "Both air and naval capabilities will, according to Admiral Dennis Blair, the former head of Pacific Forces, soon return to very robust levels."

A most curious statement. In the sentence I placed in italics above, the twelve appear to go on record against U.S. missile defenses, or to hold such defenses accountable, at least in part, for any Chinese build-up of offensive

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nuclear forces. So I would ask the following question: should the "very robust" American forces that Admiral Blair has promised us be defended against missile attack (as I assume Admiral Blair and his colleagues would insist), or not?

The reason for my question is that intermediate-range ballistic missiles are a major growth area in China's arsenal, and these missiles already threaten not only our friends and allies like Taiwan and Japan but also our entire current force structure in Asia. If we do not protect our "very robust" forces in Asia, they will be sitting ducks, doomed to "incineration" in case of war. But if the twelve, favoring those forces, also favor missile defenses for them as long as they are protecting Japan, Korea, and Taiwan, do they then mean to oppose missile defenses for the civilians of the United States? This would be an absurd position, albeit one growing logically from a faulty premise: namely, that the future of the Chinese missile force is not something that the PRC is deciding on its own, for its own reasons, but rather something that has taken shape as a reaction to things *we* do. In academia this argument, called the "response" school of thought, was once widespread, but it has been severely undermined in recent years by new evidence from Chinese as well as East European and former Soviet archives about the actual cause-and-effect relationships of the cold war; it is also stunningly condescending to the Chinese government.

UNIQUE AMONG my critics is Jonathan Pollack, who takes me to task not for what I say or how I say it but for what I do not say: namely, what U.S. policy should be. To this I plead that my article was intended as a diagnosis, not a prescription. But the policy recommendations follow directly from the analysis. We should devote our efforts to maintaining good relations with China's current regime, a challenging task requiring every bit of diplomatic talent we possess as well as enough military clout to deter any Chinese adventures. At the same time (and this is the difficult part), we must realize that one of these days the regime is going to change, perhaps suddenly, as the Soviet Union did, and begin to prepare for that eventuality. How? By working so to strengthen our alliances among Asian democracies that no matter what happens in China, the region will not be de-stabilized.

The letter from John J. Tkacik is a welcome example of genuine, reasoned disagreement. Mr. Tkacik stresses the strength of the Chinese army and its close ties to the party to which it reports. In 1989, we saw how brute force could defeat the will of millions of peaceful Chinese demanding some say in how they were ruled; may we not see the same thing again if and when the army is called upon—or steps in—to "solve" the problem of political instability? Mr. Tkacik may well be right, and what some are already calling "Chinese fascism" may yet come to pass. Nevertheless, it seems to me that another attempt to use the military against the people would risk splitting the military itself and possibly a military coup against the civilian administration. Besides, even a successful military intervention would not solve the problems I described in my article; at most, it would suppress them for a few years, and at a potentially disastrous cost to a China today heavily dependent upon foreign trade and investment.

Ambassador James R. Lilley's letter manifests wisdom derived from decades of deep involvement with the Chinese world. I agree with nearly everything he says, with two caveats. First, not all the scenarios to which I refer are "bleak." Things *could* go relatively well in China, especially if political reform were to follow economic reform. But, second, the most perilous moment for a corrupt regime is precisely the one when, having long postponed reform, it finally attempts to change. I believe China is very close to that point.

My thanks, too, to Larry M. Wortzel, who in his earlier career was one of the ablest American military officers ever to serve in China, for his intellectual support. He is correct that I misquoted President Bush, and that the nuances in the phrase "We'll do whatever it takes to help Taiwan defend itself" are important.

THE POINT of my article was that we Americans must start thinking about how we are going to deal with the change that is coming in China. My critics, while not disputing that change is coming, nevertheless appear to find the task of thinking hard about it misconceived, uncongenial, and unwelcome. Why they feel this way, and with such passion, they do not explain—which is a great pity. Nevertheless, I thank them all for taking the time to write.

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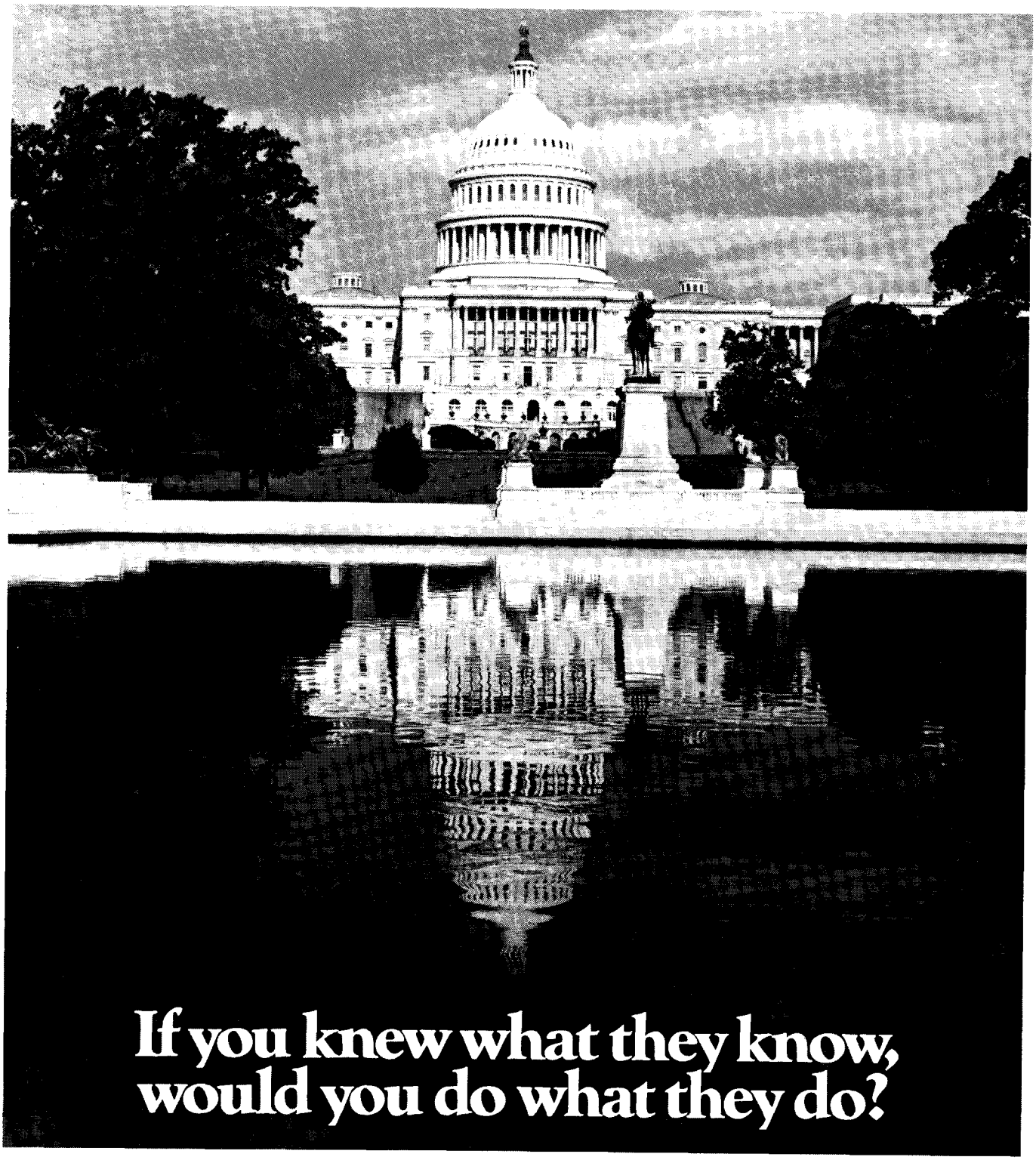

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Commentary
October 2003

Has the Supreme Court Gone Too Far?

A Symposium

The case against the imperial judiciary has been a staple of conservative polemics since at least the 1973 Supreme Court decision in Roe *v.* Wade. *By the late 1990's, the editors of* First Things *magazine were suggesting that the process had reached crisis proportions and was leading to "the end of democracy."*

But conservatives have not been alone in their anxiety. In the wake of the Supreme Court decision that brought the 2000 presidential election to an end, and of a series of cases concerning federalism and the "sovereign" dignity of the states, many liberals have also inveighed against the judicial usurpation of legislative prerogatives and the substitution of naked politics for the restraints and procedures of law. On both the Left and the Right, some have called for limiting or even abolishing the Justices' power to declare laws unconstitutional.

The Court's recent rulings on affirmative action (Grutter *v.* Bollinger *and* Gratz *v.* Bollinger) *and sodomy* (Lawrence *v.* Texas) *have imparted fresh life to these themes. Especially but not exclusively on the Right, observers have once again decried the activism of judges who ignore both constitutional precedent and the claims of elected lawmakers in order to pursue their own policy ends. The specter has been raised of, if not the end of democracy, at least the end of constitutional law.*

In an effort to assess current attitudes toward the judiciary and its place in American democracy, the editors of COMMENTARY *asked a group of prominent intellectuals and scholars to address the following questions:*

1. Have recent rulings by the Supreme Court subverted fundamental elements of our constitutional order? If so, exactly how grave is the situation, and is responsibility to be laid equally at the feet of liberal and conservative Justices?

2. Controversial court decisions have been rationalized by appeals to an "emerging" democratic consensus or (as in *Lawrence*) to human-rights norms elsewhere in the world. Is there any legitimacy to this development? In deciding constitutional questions, are there circumstances in which the Supreme Court is justified in reaching beyond its own precedents and the Constitution itself?

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3. Do you see any merit in proposals to limit the power of the Court? More broadly, what (if anything) should be done to contain or roll back the imperial judiciary?

The responses, thirteen in all, are printed below in alphabetical order.

This symposium is sponsored by the EDWIN MORRIS GALE MEMORIAL FUND.

Robert L. Bartley

THE SUPREME Court's latest rationale for affirmative action is worth quoting, illustrative as it is of the current trend in judicial activism. Here is the key passage from Justice O'Connor's majority opinion in *Grutter* v. *Bollinger*, the case involving the University of Michigan's law school:

> [R]acial classifications, however compelling their goals, are potentially so dangerous that they may be employed no more broadly than the interest demands. Enshrining a permanent justification for racial preferences would offend this fundamental equal-protection principle. . . .
>
> We take the law school at its word that it would "like nothing better than to find a race-neutral admissions formula" and will terminate its race-conscious admissions program as soon as practicable. . . . We expect that 25 years from now, the use of racial preferences will no longer be necessary to further the interest approved today.

From a legal standpoint, O'Connor's stance is ludicrous. We are issuing a decision, the Court says, but no one should take it as *stare decisis*. In fact, we understand that the equal-protection principle enshrined in the Fourteenth Amendment prohibits the policies we hereby sanction. But because of our view of the current social situation, this part of the Constitution is hereby suspended. We hope that the social situation will change, and when it does we hope some future Court takes the opposite view.

If I had invested my life in the law, I would find this, if not horrifying, at least disgusting. It makes a mockery of the highest legal ideals: that the law should be rooted in settled and predictable principles; that courts should follow established precedent; that, if laws need to be changed in light of new circumstances, courts should defer to elected representatives. Surely, even for those of us who see the law as one of many different institutions surrounding and supporting our democracy, society suffers when the courts deviate from these principles.

Yet, in the broader context of American history, the attitudes of the Court deserve more sympathy, even from those of us who disagree with many of its rulings. This context revolves around both the issue of race, the great stain on American history, and the specific genesis of the recent spate of judicial activism.

As recently as the mid-20th century, a hundred years after the war to eradicate the stain, an American black coming of age could by no means expect to be judged by individual merit; exceptional individuals aside, his race would be a handicap. Although society had by then made crucial efforts to curtail discrimination, those efforts had been frustrated by abuse of one of our institutions, the right of unlimited debate in the U.S. Senate. There, the filibuster had become not a right of debate but a legislative veto.

With the legislative route closed, leadership fell to the judicial branch, which acted decisively in *Brown* v. *Board of Education* (1954). But with *Brown*, the Warren Court also jumped feet first into social policy, and later history shows why legislative solutions are much to be preferred. In the school-busing cases, judges professing to speak from categorical principles found themselves overriding the educational mission of schools and imposing unrealistic costs on children, not only white but black.

A decade later, the legislative route having been cleared, the Voting Rights Act of 1965 removed a last barrier to equal status for blacks. The remaining issue was how long the catching-up process would take. With lingering disadvantages in educational opportunity, socio-economic attainments, role-modeling, and so forth, some kind of jump-start seemed reasonable. This was the rationale for affirmative action, an attempt to help disadvantaged blacks without establishing racial quotas or allowing group rights to override individual merit.

Of course, we all know how it has worked out. De-facto quotas have become the norm, talented blacks have come to feel that affirmative action taints their accomplishments, and political constituencies have encrusted themselves. Still, in the

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context sketched above, O'Connor's opinion in *Grutter* seems much more reasonable. A jumpstart, yes, but not a permanent division along racial lines. The issue is when to back away. She says 25 years hence; my own instinct is that a good time would have been right now. In particular, I find her reliance on the good faith of the academic community touchingly naive. But I also find it hard to assert a categorical constitutional argument against affirmative action. My case against it is, instead, prudential and pragmatic.

I ALSO recognize that courts find it difficult to be pragmatic when themselves professing to speak in categorical constitutional principles. With *Brown*, the Warren Court spit out the bit of judicial restraint. Rather than restrict itself to overriding the filibuster on racial issues, it scanned American society for errors it could correct. It rewarded the crusade against religion by Madalyn Murray O'Hair, overturning school prayer and setting in motion a strain of litigation that still has the Court deciding how many Santas are needed to balance a crèche. Police forces around the nation have perhaps learned to cope with *Miranda* v. *Arizona* (1966), but not without turmoil. These cases and others surely demonstrate the high price society pays for judicial overreaching.

The most famous, and most serious, case is *Roe* v. *Wade* (1973). This had essentially no constitutional footing. Worse, it gave us the culture war. Abortion foes never had their say in the political arena; ironically, *Roe* mobilized evangelicals who since the Scopes trial in 1925 had eschewed involvement in politics. On the other side, abortion advocates, now armed with a constitutional imprimatur, became ever more militant, repeatedly asserting that any compromise—restrictions on "partial birth abortion," for example—would collapse their whole edifice.

Yes, then, *Roe* was wrongly decided. Yes, it was the result of an imperial judiciary. Yes, it is horrifying to those who believe that life begins at conception, and that any abortion is murder. Yes, it continues to inflame our politics.

And yet. Not all Americans—indeed, not close to a majority—do accept that life begins at conception. What if abortion had been, properly, left to the legislative process? I very much doubt the "at conception" definition would have been written into law. To judge by what other modern nations have done, we would have ended up with something that looks a lot like *Roe*'s three-trimester division.

Besides, the Supreme Court has been wrong before. In his eloquent dissent in *Planned Parenthood* v. *Casey* (1992), Justice Scalia cited the *Dred Scott* decision and the Court's opposition to the New Deal. In those cases, as in *Roe*, the Court no doubt sacrificed some of its legitimacy, and no doubt the high ideals of the law were besmirched. But somehow the Republic survived.

THE KEY is, as that great legal mind Mr. Dooley remarked, "th' supreme coort follows th' iliction returns." Despite continuing frustration, we are already beyond the activist assertiveness of the Warren era. Whatever it lacks in legal logic, the majority opinion in *Grutter* is moderate in tone. It tries to put limits, in logic and time, on its own activism (although we cannot be sure those limits will hold).

In the same way, it is hard to get too excited about court decisions overturning sodomy laws. Those laws are not really meant to be enforced anyway, and as Scalia noted in his dissent in *Lawrence* v. *Texas*, many conservatives, too, would oppose them in a legislative forum. A much more serious problem is a potential Supreme Court decision upholding interstate recognition of gay marriages. Polls suggest that such a decision would cut divisively against the grain of American opinion.

The answer to this, I think, lies not in specific limitations on the judicial branch but in the general political process. By the nature of lifetime tenure, the judiciary is often the last branch to register a new era in society's opinion. That is why the judiciary is the last hope of the liberal consensus that prevailed from FDR through JFK. A more conservative consensus has dominated presidential elections for a generation, and the Republican party has now taken a legislative majority.

That the judiciary is now the battleground is evidenced by the filibusters against judges nominated by the Bush administration. Republicans control the Senate with 51 votes, still far from the 60 needed to close debate. However, further elections loom. In the 2004 contests, nineteen Democratic seats are at stake, ten of them in "red" states carried by President Bush.

Further Republican gains, even if not providing all of 60 votes, would certainly make filibusters more difficult and potentially expensive for Democrats. A conservative shift in the judiciary would become easier. At least as important, the gains would be heard by present judges, as the 1936 elections created the "switch in time that saved nine."

In elections nothing is certain, and mine is not a

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guaranteed answer to the threat of an imperial judiciary. But it is a far more plausible answer, I think, than a crusade against the Court for offenses that most Americans would consider perhaps mistakes but not intolerable ones. Critics intent on changing the judiciary should put their efforts into changing the balance of public opinion and of political power.

ROBERT L. BARTLEY *is editor emeritus of the* Wall Street Journal *and writes its weekly "Thinking Things Over" column.*

William J. Bennett

WHO WILL govern the governors? This question, as old as Plato, as old as the founders, was raised throughout the 1960's on college campuses and in learned discussions about the supposed failures and pitfalls of representative government. At the time, the favored answer was: the Supreme Court—and most particularly the Supreme Court as then constituted under Chief Justice Earl Warren.

That Court, despite a number of meritorious rulings, was in fact busy crafting new law—which is to say, doing the job of the legislature. The First, Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments became battering rams against various forms of state and federal law. And when the words in those Amendments simply would not suffice for the task at hand—could not be molded to fit desired political-legal outcomes—new rights were created by Justices who, regarding themselves as in effect a new Constitutional Convention, inserted into the existing document words and concepts like "privacy" and "expression" (as in "right to privacy" or "freedom of expression") that were somehow missing from the original.

Charles Kesler, a scholar of the founding, recently quipped that the worst place to study the Constitution these days is in law school. It is more than a quip: law schools teach constitutional analysis, by which is meant what sitting Supreme Court Justices have written about the Constitution. The *Federalist Papers*, the debates at the real and original Constitutional Convention, other documents from the era of the founding—these are not seriously studied. No wonder, then, that our lawyers and judges—ignorant of what Jay, Madison, and Hamilton said, wrote, and meant—are under the impression that constitutional law changes with the times and the persons empowered to pronounce on it. No wonder, too, that Supreme Court Justices can quite preposterously imagine a basis in constitutional law for asserting that, for example, "At the heart of liberty is the right to define one's own concept of existence, of meaning, of the universe, and of the mystery of human life."

That sentence *is* constitutional law, written by three sitting Justices, two appointed by President Ronald Reagan, one appointed by President George H.W. Bush. And that sentence, from *Planned Parenthood* v. *Casey* (1992), has now evolved from the aberration it seemed when first uttered into an ingrained element of our jurisprudence, its bedrock authority invoked just this past term to buttress the majority opinion in *Lawrence* v. *Texas*.

All this needs to be kept in mind when we hear or read about the damage done by the Warren Court. It especially needs to be kept in mind when we hear liberals complaining about today's "Republican" or "conservative" Court. Yes, Nixon, Ford, Reagan, and Bush appointees make up seven of the nine Justices on the Court; but we have to thank this same Court for finding unconstitutional a Nebraska ban on partial-birth abortion, for approving racial preferences in a public-university law school, and for discovering in *Lawrence* v. *Texas* a constitutional right to sodomy.

The problem may reside in only two or three of those seven appointees. But the solution, clearly, does not rest only in electing Presidents or congressmen of one party as opposed to another. Altogether, such attempts to restrain the "imperial judiciary" have not fared well in the recent past and cannot be counted on to do better in the future. No doubt that is why, over the past two years, many in the conservative movement—or "family movement," as some have taken to calling it—have been thinking about a constitutional amendment to preserve the concept of marriage as the union of a man and a woman; their fears have become all the more urgent in light of the prospect, now brought closer by *Lawrence* v. *Texas*, that the judiciary will next find a constitutional right to gay marriage.

It is somewhat disorienting to think that we have been driven to this: spending our time and energy in order to save, protect, and preserve the *family*, of all seemingly invincible institutions, from a branch of our own government. But that is precisely what many are nobly trying to do. Will they succeed? The amendment process is both slow and uncertain, and I, for one, cannot think of a single victory that anybody, conservative or liberal, has won in

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over forty years by resorting to it. Controversial amendments are simply too easy to stop.

The legislative route seems no more promising. Whenever Congress has tried to reassert its equal status in the constitutional order, passing legislation in order to mitigate what it deems to be judicial error, the Court has managed to reassert its arrogated supremacy by ruling as it will do once such legislation is brought before it. Court-stripping efforts invoking Article III of the Constitution seem to me similarly will-o'-the-wisp.

The problem is deep; it has been long in gestation; and the solution cannot be a quick fix. Recently I took part in a conversation with two well-known and well-versed professors of constitutional law. The topic: how to respond to wrong-headed court rulings. Both of them, having been trained in the day when law schools were good places to learn about the Constitution, were partial to an approach that would employ delicately crafted, black-letter legal language invoking precedent and original intent. In so doing, they were, in effect, proposing to compete in one of today's professional wrestling matches while adhering to Marquis of Queensbury rules—a lost cause.

Until the appointment of Clarence Thomas, few Justices were in the habit of citing the Declaration of Independence—the first "act of Union" according to Thomas Jefferson and James Madison, who recommended that it be so studied in the nation's legal academies. As far as I am aware, no elite law school today teaches the Declaration of Independence as "organic law," even though its understanding of equality and freedom is central to any proper appreciation of the Constitution. One way, therefore, to help restore the Declaration, and by extension the founders' original intent, might be to encourage the establishment of academic centers like the James Madison program directed by Robert P. George at Princeton. This program, in effect a Princeton "sub-college," is dedicated to training students in taking the founding seriously. It functions at the undergraduate level, but more such centers should be set up at as many law schools as possible.

Better education is not just a glib thought; it is the crux of the matter. If law schools were not a problem, we would not be speaking of an "imperial judiciary," holding symposia on the subject, or thinking of ways from the Left or Right to curb it. And while we hope for and work toward better education, we can urge practical and political measures as well. The President needs to take up, with renewed vigor, the task of finding federal appointees who are well-vetted and well-versed in constitutional law—and who know how to defend themselves. When hostile public-interest groups or Senators try to make political hay out of a nomination, the debate should not be shunned but welcomed—and it should be joined not only on procedural grounds but on the merits of the nominee's judicial philosophy. Conservatives have erred in the past by seeking easily confirmable nominees who have never taken a controversial position or written an opinion touching upon core conservative concerns. It is a mistake to shrink from a fight over a confirmation—after all, it is the Constitution we are fighting for.

As for today's Supreme Court, critics might usefully take a lesson from Abraham Lincoln, who in the wake of the infamous *Dred Scott* ruling boldly asserted that when a decision is wanting in all appropriate "claims to the public confidence, it is not resistance, it is not factious, it is not even disrespectful, to treat it as not having yet quite established a settled doctrine for the country." We need not bow to every decision that departs from precedent or constitutional logic. Such decisions may be viewed as the end of the matter for a particular case; they need not be viewed as the end of the matter for all time. Keeping an eye on the larger picture, we can move to redress their effects—by means of legislative responses where possible, in extreme circumstances even by amendment, but above all by going to the root of the problem and beginning seriously and steadily to undertake the long, arduous task of legal reeducation, preeminently by redirecting the attention of professors and students alike to the Constitution and the intentions of its framers. Only by succeeding at that task will we finally be able to say once again, with Hamilton, that the judiciary is indeed the branch of government "least dangerous to the political rights of the Constitution."

William J. Bennett *is the former U.S. Secretary of Education and the author of, among other books,* Our Sacred Honor: Words of Advice from the Founders in Stories, Letters, Poems, and Speeches.

Peter Berkowitz

It is crucial to recall, in this season of conservative discontent with the U.S. Supreme Court, that two years ago liberals were enraged by (and still fume over and plot revenge for) what they regarded as the Court's unpardonable intervention in the 2000 Florida election controversy. *Grutter* and

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Lawrence have in common with *Bush* v. *Gore* that all are hard cases, in which respectable constitutional goods can be found on both sides of the question. At the moment, the Court is bearing the brunt of the strain that these hard cases have imposed on our constitutional order.

Bush v. *Gore* stemmed from a freakishly close presidential election that turned on legal challenges rooted in real silences, gaps, and ambiguities in Florida law, federal law, and the Constitution. The recent cases arise out of controversies concerning core constitutional issues—the boundaries of personal freedom and the contours of equality under the law. Although the constitutional order is holding up, a tendency to equate law with morality and politics, evident in *Grutter* and *Lawrence* and even more so in the writings of the legal scholars who have assumed the role of explaining the Supreme Court to the public, is increasing the strain.

Bush v. *Gore* ignited a firestorm of scholarly criticism. Almost immediately after the Court's December 12, 2000 decision, the legal academy seemed to rise up and, almost with one voice, to denounce the 5-4 decision as lawless, undemocratic, and poisoned by conservative partisanship. To be sure, emotions were running high: the Court had never before decided a case that had the foreseeable consequence of producing a winner in a disputed presidential election, and the Court had reasons, rooted in separation-of-powers principles, for refraining from taking the case until the political process had been given more time to resolve the controversy. Nevertheless, the majority opinion identified a well-accepted constitutional principle: the equal-protection clause of the Fourteenth Amendment prohibits states from debasing or diluting citizens' votes, or subjecting their votes to arbitrary and disparate treatment. The Court reasonably found that, in a number of ways, the recount ordered by the Florida Supreme Court violated that principle, by unconstitutionally applying either varying rules and standards or no rules and standards to the question of which ballots should be recounted as well as to the question of what was to count as a legal vote.

But, although the Court's opinion was certainly open to criticism, few scholarly critics paused long enough in their recriminations even to state accurately the Court's holding. With apparently good conscience, prominent scholars adopted the pose of legal analysis only to spurn legal analysis. The scholarly war against *Bush* v. *Gore* marked a culmination, decades in the making, of the politicization of legal scholarship.

OF COURSE there is an irreducible element of moral and political judgment in adjudication. The serious question is whether judges introduce moral and political judgments in the effort to resolve the law's silences, gaps, and ambiguities or instead invoke them as part of an end run around the law.

Unfortunately, the reasoning by which the Court justified its decision in *Grutter* to uphold the University of Michigan law school's affirmative-action program appears more like an end run around the law. It is not that racial diversity is incapable of contributing to intellectual diversity, which is the form of diversity that law schools rightly pursue. Nor is it that we lack an interest as a society in having minority students attend elite law schools and then go on to occupy public positions of prominence and power. Nor again is it that the Constitution absolutely forbids states to use racial classifications. Rather, the problem is that the Court's precedents in the area of equal-protection law required Justice O'Connor, writing for the majority, to subject to "strict scrutiny" the law school's controversial claims both about the benefits of racial diversity in the classroom and about the actual operations of its admissions process. This, however, O'Connor declined to do.

Strict scrutiny is the most severe and searching form of equal-protection review. It is triggered when states classify on the basis of race; state actions and state-funded actions rarely withstand it. Although she purported to apply strict scrutiny, O'Connor in fact took the law school at its word, essentially accepting its characterization both of the benefits of racial diversity and of how its admissions office achieved those benefits, while refusing to take seriously the criticisms Grutter's lawyers made of both. O'Connor thereby transformed the most severe and searching form of equal-protection review into the most deferential form. Whatever its political consequences, *Grutter* does not represent a creative extension of the law of equal protection but a disregard of its imperatives.

Similarly, in *Lawrence*, Justice Kennedy's majority opinion seemed to follow the logic of his moral and political judgments rather than the logic of the law. True, many of these moral and political judgments have a strong basis in our fundamental beliefs about liberty. Our constitutional culture does link liberty to privacy; it does stress the sanctity of the home; it does place a premium on consent, especially the consent of adults to actions that take place in the privacy of their homes and that do not cause physical harm; and it increasingly recognizes that the intimate lives of gays and lesbians are not

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the law's business. But as a matter of constitutional law, the Court's due-process precedents required Justice Kennedy to subject the Texas statute prohibiting homosexual sodomy to "rational scrutiny." This, however, Justice Kennedy declined to do.

Rational scrutiny is not strict scrutiny; it is, rather, the most deferential form of due-process review. It can be applied, according to the Court's case law, unless the challenged regulation implicates a "fundamental right or liberty"—that is, a right that is "deeply rooted in this nation's history and traditions" and "implicit in the concept of ordered liberty." Since rational scrutiny requires only some conceivable rationale, state actions (like the Texas statute outlawing homosexual sodomy) almost always pass it. Yet while refraining from declaring the right at issue in *Lawrence* to be fundamental, Kennedy subjected the Texas sodomy statute to a searching review, and on that basis found it unconstitutional. Like O'Connor's majority opinion in *Grutter*, Kennedy's majority opinion in *Lawrence* appears to bow to the Court's precedents while creating precedents afresh.

Constitutional law is a demanding discipline. Because it involves the application of rigorous reasoning to materials—constitutional text, structure, history, and case law—that are in many instances susceptible of competing readings, that frequently touch on our most cherished principles, and that cannot avoid debatable empirical judgments, it gives rise to hard cases involving the day's most divisive issues. Nevertheless, some readings of constitutional law are careless, extravagant, or unsound. When Justices of the Supreme Court commit such readings in their opinions, even for good causes, the danger in the short term is that they thereby encourage the suspicion among legal scholars that when Justices do follow precedent, it is only because they find it expedient to do so.

At the moment, and despite the best (that is, the worst) efforts of legal scholars in the wake of *Bush* v. *Gore*, the Court still enjoys an honored place in public opinion. But given the formal role assigned the judiciary in our system and the informal role performed by legal scholars, one could reasonably worry that down the road, the proliferating propensity among the latter to equate law with morality and politics will impose a strain of truly dangerous proportions on our constitutional order.

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Robert H. Bork

The question of whether "recent rulings by the Supreme Court [have] subverted elements of our constitutional order" has by now acquired a quaint, antique ring. Even to ask the question seems almost a piece of drollery. The Supreme Court has been beavering away at the underpinnings of the Constitution for 50 years; before that, its acts of subversion were less frequent and served a different ideology but were no less real. Prior to 1937, when FDR remade the Court, conservative Justices worked occasional miracles of transubstantiation with the Bill of Rights. The classic examples are, of course, *Dred Scott* (1857) and *Lochner* (1905), the one creating a right to hold slaves under the due-process clause of the Fourteenth Amendment, the other creating a right to make contracts under the same clause. Neither decision had any support in the actual document.

Judicial invention of new and previously unheard-of rights accelerated over the past half-century and has now reached warp speed. It is not just *Grutter*'s permission to discriminate against white males and *Lawrence*'s creation of a right to homosexual sodomy. The Court has created rights to televised sexual acts and computer-simulated child pornography and, in direct contradiction of the historical evidence, has continued its almost frenzied hostility to religion. The list of activist decisions constitutionalizing the Left-liberal cultural agenda is lengthy.

The term "activism"—the reaching of results that cannot plausibly be related to the Constitution—is used to describe this process and to serve as invective by both sides in arguments between liberals and conservatives. Though there have been conservative activists, it seems to me undeniable that the activism of the Court from the Warren era on has been overwhelmingly liberal. It is interesting that the dominant theme of the Warren Court was equality, hence its heavy reliance upon the equal-protection clause of the Fourteenth Amendment, while today's Court stresses individualism and emphasizes the liberty component of the same Amendment's due-process clause. Though both are misuses, the shift does correspond to the movement of Left-liberalism from concern with economic inequality to absorption with "lifestyle" freedoms.

One result of rampant activism is the decline in the intellectual quality of the Court's opinions. *Grutter* and *Gratz* accepted the transparent false-

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hoods of the University of Michigan about the need for racial diversity in the student body to provide a quality education, abandoning the constitutional practice of strict scrutiny of racial classifications and utterly ignoring the flat prohibition of racial discrimination in the 1964 Civil Rights Act. *Lawrence* said little more than that attitudes toward homosexual sodomy have changed in the past 50 years and, citing a decision of the European Court of Human Rights, that Europe now recognizes a right to engage in it.

There is an increasing tendency for the Court to rely upon such decisions of foreign courts in creating the constitutional law of the United States. That, to put it gently, is flabbergasting. What the decisions of foreign courts have to do with what the framers and ratifiers of the U.S. Constitution understood themselves to be doing is not explained, and cannot be explained. The result of this trend, if it continues, as it seems likely to do, will be a homogenized international constitutional law reflecting the trendy views of liberal elites here and abroad.

HOW GRAVE is the situation? Though ludicrous, it is extremely serious. In these and other judgments, the Court is steadily shrinking the area of self-government without any legitimate authority to do so, in the Constitution or elsewhere. In the process, it is revising the moral and cultural life of the nation. The constitutional law it is producing might as well be written by the ACLU.

That fact alone should make it clear that conservatives do not bear the responsibility; they spend their energies writing splenetic dissents and dyspeptic comments like this one. True, liberals grow apoplectic over *Bush* v. *Gore*, which they see as their one chance to convict conservatives of activism. Unfortunately for that tactic, the concurring opinion by Chief Justice Rehnquist (joined by Justices Scalia and Thomas) was solidly based on the Constitution and a federal statute, and two members of the liberal bloc on the Court agreed with the majority that the judgment of the Florida Supreme Court in Gore's favor had to be reversed. To repeat, activism in our time is a liberal phenomenon.

If judicial activism, which means ruling contrary to the Constitution, is improper, which both sides concede, at least rhetorically, then there is no justification for any court's reaching beyond the Constitution. Ours is a democratic polity, and the Constitution provides the sole authority any judge has for nullifying democratic choices. When there is a felt need for new law, the legislature is capable of providing it. Reaching beyond constitutional precedents, however, is another matter altogether. Judicial misinterpretation of a statute can be rectified by the legislature, but only a court can overrule an erroneous constitutional decision. Correcting a constitutional error is not judicial activism.

The framers made a fundamental mistake by creating a body of lawyers with uncheckable power. That mistake was understandable, because they had no reason to know what courts could become, but the result is that we have an untethered power that overrides democratic governance whenever the mood strikes it. There is no obvious cure for the situation. Congress's power to make exceptions to the Supreme Court's jurisdiction, given in Article III, provides no solution. Jurisdiction would then lodge in the state courts under Article IV and could not be removed. Many state courts have become as unrestrained and trendy as the federal courts. In short, there appears to be no way to contain the imperial judiciary.

There was a time when it was said that the Court's improper expansion of its powers would be held in check by informed criticism from the legal profession. To the contrary, much of the profession, seeing the Court as its lever of power, urges it on to further adventures. In any case, the Court is impervious to criticism. Its attitude is that of the Arab saying, "The dogs bark but the caravan moves on."

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Alan Dershowitz

FEW SUBJECTS engender more results-oriented hypocrisy than the role of the judiciary in a democracy and the related issues of "states' rights" and "original intent."

Conservatives rail against elitist courts that overrule majoritarian decisions only when these conservatives agree with the political majority and disapprove of the actions of the unelected "legislators in robes." Liberals condemn the activism of judges who strike down legislation of which they approve, or who substitute their own politics for those of the political branches of the government.

Similarly, critics invoke states' rights when they

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approve of what the states are doing and disapprove of federal intervention, but these same critics are often quick to praise the federal trumping of states' rights when they agree with the federal government's position on the substantive issue. Judges invoke original intent (or their interpretation of it) when doing so serves their ends, and ignore original intent when it contradicts their agendas.

This is an old story harking back to the earliest days of the Republic. It should come as no surprise that few politicians really care about the structural issues governing the division of power among the branches, and between the federal government and the states. Politicians get elected because of the immediate results demanded by their constituents, not the long-term structural arrangements debated by constitution-makers and political theorists.

But what is surprising is how many scholars and professors—with tenure, and with no need to pander to constituencies—likewise elevate results over structure, or, more subtly, *use* structural arguments to produce substantive results they prefer. Since legal scholars influence judicial decisions in many ways—by providing intellectual ammunition, by justifying and rationalizing decisions of which they approve, by themselves becoming judges—this latter phenomenon is extremely important, and should be studied more critically than it has been.

In my experience, most—though certainly not all—legal academics do construct and support structural arguments that produce substantive results of which they personally and politically approve. When, in the early 20th century, progressive state and federal legislatures were enacting social-welfare laws that were being struck down by conservative courts, progressive academics praised judicial restraint and the "passive virtues" of such doctrines as "standing," "case and controversy," "mootness," and "political question." Decades later, when liberal courts were striking down conservative legislation—especially in the areas of abortion, religion, criminal justice, and civil rights—liberal academics praised judicial activism, while conservatives condemned it. The Supreme Court's activist intervention in the 2000 presidential election was condemned by liberal activists who disapproved of the result, and praised by at least some conservatives who approved of the result. Now conservatives are demanding that the federal government deny to the states the power to define marriage so as to include same-sex unions, despite the historical fact that family law has traditionally been the sole province of the states.

In light of this pervasive hypocrisy on all sides, is it actually possible to devise an approach to judicial review that is not politically or personally results-oriented? John Hart Ely, in his classic book *Democracy and Distrust* (1980), came closest to providing a justification for politically neutral judicial checks on popular democratic actions. The proper function of the judiciary, according to Ely's theory, is to protect the integrity of the process by (1) clearing away the obstacles to political change erected by the majority and (2) facilitating the representation of minorities in the face of prejudice in the political marketplace. By assigning to the courts the role of opening the channels of democracy and protecting minority groups that, as a result of a "malfunctioning" in the political process, are incapable of protecting themselves, Ely confined issues of constitutional interpretation to questions of participation—rather than to the "substantive merits" of the political choices under attack.

What about original intent? There is a wonderfully resonant story in the Talmud that casts an interesting light on this contentious issue. Rabbi Eliezer was engaged in an acrimonious dispute with his fellow sages about a point of law. Eliezer "brought forward every imaginable argument, but [the others] did not accept them." Finally, in desperation, he invoked the original intent of the Author of the Torah. Eliezer implored: "If the law agrees with me, let it be proved from heaven!" Whereupon, a heavenly voice cried: "Why do you dispute with Rabbi Eliezer, seeing that . . . the law agrees with him?" But the other rabbis rebuked God for interfering in this human dispute: "You have already written the Torah [and] we pay no heed to a heavenly voice." The message was clear. God's children were telling their Father: it is our job to give meaning to the Torah that You gave us. You gave us a document to interpret, and a methodology for interpreting it. Now leave us alone. And, according to the Talmud, God agreed, laughing with joy: "My . . . children have defeated Me in argument."

No single person drafted the Constitution. Our contemporary rabbis in robes cannot call for a heavenly voice to confirm the correctness of their constructions of such terms as *due process*, *equal protection*, *freedom of speech*, or *cruel and unusual punishment*. But I wonder whether Jefferson, Madison, and Hamilton would not respond to a contemporary Eliezer's call for authoritative interpretation by declining to interfere and by saying: "It is a constitution you must expound. We wrote its phrases long ago in a different era. Pay no attention to those

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who would invoke voices of certainty from the grave or the heavens."

True, to *ignore* the intent of the framers would be as simpleminded as pretending to know with certainty the singular meaning of language that was probably selected, at least in part, for its capacity for redefinition over time. The paradox of the American system of judicial review—with its concomitant debate over original intent—is that you cannot live comfortably with it or without it.

An America without judicial review would be unthinkable. Although most nations, even democratic ones with traditions of liberty, do survive in its absence, the power of our courts to declare unconstitutional the actions of the other branches has become an indispensable aspect of our sovereignty.

Taken to an extreme, the power of judicial review can be transformed into an undemocratic veto by an appointed and unaccountable aristocracy. A judiciary whose interpretations of such broad concepts as due process and equal protection of the laws are unrooted in some broad historical purpose can quickly become a super-legislature, simply voting to overrule inferior legislatures and executives. But, on the other hand, a judiciary confined by the narrow visions of a past generation is a judiciary incapable of adapting to new dangers unforeseen by the framers.

There is no perfect solution to the paradox of judicial review, the conundrum of states' rights in a federal republic, or the mystery of original intent. No one—no scholar, justice, lawyer, or layman—has discerned or devised the perfect rationale, limiting principle, or methodology for judicial review. Even Ely's process-oriented approach raises nearly as many close questions as it answers. This imperfection has become an invitation to hypocrisy on all sides.

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Lino A. Graglia

RECENT RULINGS by the Supreme Court are instances of judicial activism that do indeed subvert the system of government contemplated by the Constitution. But this subversion has been going on for a long time.

The three basic principles of our system of government are democracy (or republicanism)—i.e., popular self-government through elected representatives; federalism—i.e., decentralized power, with most social-policy decisions made at the state rather than the national level; and separation of powers. Judicial activism—which for practical purposes may be defined as rulings of unconstitutionality not required by the Constitution—amounts to rule by judges and ultimately the Supreme Court: a committee of nine lawyers, unelected and holding office for life, making policy for the nation as a whole from Washington, D.C. The resulting system of government, totally undemocratic, totally centralized, and with the judiciary performing the legislative function, is in violation of all three constitutional principles.

What has subverted our constitutional order is not just the Court's most recent rulings but the unprecedented power of judges to invalidate as unconstitutional the acts of other officials of government. The consequences could hardly be more grave. The first significant exercise of the power of judicial review against a federal statute was the 1856 *Dred Scott* decision; by invalidating a political resolution of the slavery issue, this decision seemed to make the Civil War inevitable. More recent exercises of the power of judicial review have given us a system of criminal justice in which the guilt or innocence of the accused is often the least relevant consideration; busing of children in an attempt to increase racial "balance" in schools; the conversion of the abortion issue from one that was being dealt with on a state-by-state basis, with abortion generally being liberalized, into an extremely divisive topic of national moment.

The central fact about constitutional law is that it has very little to do with the Constitution, a brief document that wisely precludes very few policy choices. The great bulk of constitutional cases involve state, not federal, law. Nearly all of them purport to be based on a single provision, the Fourteenth Amendment, or rather on four words in that amendment: "due process" and "equal protection." In fact, however, the Court's decisions on basic issues of social policy turn not on those words at all but on the policy preferences of a majority of the Justices. Those preferences almost always mirror those of a liberal cultural elite of which the Justices are a part and, most importantly, the views of elite law-school faculties.

Virtually every one of the Court's rulings of unconstitutionality over the past 50 years—on abortion, capital punishment, criminal procedure, busing for school racial balance, prayer in the schools, government aid to religious schools, public display of religious symbols, pornography, libel, legislative reapportionment, term limits, discrimination on

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the basis of sex, illegitimacy, alien status, street demonstrations, the employment of Communist-party members in schools and defense plants, vagrancy control, flag burning, and so on—have reflected the views of this same elite. In every case, the Court has invalidated the policy choice made in the ordinary political process, substituting a choice further to the political Left. Appointments to the Supreme Court and even to lower courts are now more contentious than appointments to an administrative agency or even to the Cabinet—matters of political life or death for the cultural elite—because maintaining a liberal activist judiciary is the only means of keeping policymaking out of the control of the American people.

Today's liberal complaint—that the situation has changed under the current Rehnquist Court—is almost entirely a myth. The Rehnquist Court, constant in membership since 1994, consists of four very reliable liberals: Justices Stevens, Souter, Ginsburg, and Breyer. These four can count on being joined on most issues of basic social policy by either Justice O'Connor or Justice Kennedy or, as in *Lawrence*, both. Thus, the Rehnquist Court not only reaffirmed the constitutional right to abortion created in *Roe* v. *Wade* but extended it to so-called partial-birth abortions; not only refused to overrule the infamous *Miranda* decision but invalidated a federal statute that would have limited it; not only reaffirmed the constitutional prohibition of state-sponsored prayer in schools but extended it to prohibit a nonsectarian, student-composed invocation of the deity at a high-school graduation ceremony. It found the operation of an all-male military academy to be unconstitutional sex discrimination. In a preview of *Lawrence*, it overturned a provision of the Colorado constitution adopted by popular referendum that precluded special rights for homosexuals. It has now upheld race preferences and disallowed sodomy laws. If this is a conservative Court, what would a liberal Court do?

The *Grutter* case, while undoubtedly an important victory for liberals, must be distinguished from *Lawrence* and *Bush* v. *Gore* in that it upheld rather than invalidated the challenged policy choice. Actually, it is unlikely that the Fourteenth Amendment, guaranteeing certain basic civil rights to blacks, was meant to prevent a state from granting preferential treatment to blacks. But the *Grutter* decision *is* inconsistent with *Brown* v. *Board of Education*, once universally understood as prohibiting all official race discrimination; it is also inconsistent with Title VI of the 1964 Civil Rights Act, which prohibits all racial discrimination by institutions that accept federal funds. The Court's refusals to apply the Act, first in *Bakke* (1978) and then in *Grutter*, cannot be seen as other than acts of judicial bad faith.

Liberal complaints about conservative activism by the Rehnquist Court rest almost entirely on *Bush* v. *Gore*, a series of federalism decisions, and the fear, now shown to be unfounded, that the Court would disallow race preferences. The five-to-four decision in *Bush* v. *Gore* was undoubtedly activist, but arguably consistent with the Court's earlier interventions in the political process and justifiable as countering the liberal activism of the Florida Supreme Court. The Court's federalism decisions, whatever their merits, are not likely to prove successful in limiting federal legislative authority.

If one accepts, along with Churchill, that democracy with all its faults is the best form of government—and even the most ardent defenders of judicial review purport to accept this—one must reject the notion that some issues of basic social policy are better decided by electorally unaccountable officials. In our system, the only rationale for unelected judges to overrule policy choices made by elected representatives is that the judges are effectuating the true will of the people as expressed in the Constitution. To accept that judges may invalidate such policy choices on other grounds is to accept not only that they may act dishonestly but, more significantly, that they are the appropriate policymakers on the issue involved. At the very least, this proposition should be openly defended, not established by a ruse. As for permitting judges to conform domestic law to foreign law, that is to abandon national sovereignty, something almost no political leader would undertake to defend. Finally, the idea of an "emerging democratic consensus" would seem to obviate any need to argue for judicial intervention in the first place.

The claim that the Court's rulings of unconstitutionality are based on the Constitution has been patently fictional for so long as almost, one might suppose, to achieve a degree of legitimacy. Since no one can actually believe these are the commands of the Constitution, might it not be fair to assume that the Constitution has in effect been amended by popular acquiescence in the Court's power to assign to itself the final decision on any issue it may choose? That power is, in any event, the present reality, and constitutional scholars have created a cottage industry devising ingenious theories to show that the Court's decisions result not from indefensible policymaking but from some esoteric form of constitutional interpretation.

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The available means of limiting the Court's power—constitutional amendment, impeachment, limitation of jurisdiction—have for various reasons turned out to be more theoretical than real. Hope once lay in the making of new appointments, but the failure of ten consecutive appointments by four Republican Presidents to change the direction established by the Warren Court has shown this hope, too, to be unreliable. Rule by judges can certainly be solved by abolishing judicial review, but the real problem resides less in judicial review as such than in the Court's reading of the Fourteenth Amendment as a text without any definite meaning. *That* problem could be solved either by returning the Fourteenth Amendment to its original meaning or by giving it *any* definite meaning, thus making it a judicially enforceable rule.

The system of checks and balances set up by the Constitution has broken down where the Supreme Court is concerned; that institution now checks but is not checked by the other branches. President Lincoln dealt with the abuse of judicial power by announcing that although he would not defy the Court's *Dred Scott* decision, neither would he accept it as settling the slavery issue. Congress and the President could similarly make clear that contemporary Supreme Court rulings of unconstitutionality without basis in the Constitution deserve not respect but censure. If the political will were there, means could be found to return the country to the experiment in popular self-government in a federalist system with which we began.

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William Kristol

TODAY'S JUDICIARY really is "imperial" and, to a remarkable degree, extra-constitutional. The courts have done serious damage to the American political and social order. They therefore pose a major political problem. But this is a problem that defenders of the constitutional and political order—call us conservatives—have so far failed to deal with successfully.

The failure goes back at least three decades. By the mid-1970's, the "imperial judiciary" was already understood to be a problem, not just on the far reaches of the political Right, or among the constitutionally fastidious, but in (more or less) mainstream circles like this journal. The federal courts were in the process of imposing a disastrous educational and social policy of forced busing all around the country, based on a claim of an amazingly broad power to make up for alleged past wrongs. Meanwhile, the Supreme Court had in 1972 outlawed the death penalty as it was then administered, and in 1973 had struck down the abortion laws of all 50 states—both startlingly extra-constitutional actions.

But this moment of opportunity to curb the courts was lost. For one thing, Gerald Ford's appointment of John Paul Stevens in 1975 meant the conservative bloc on the Court would remain a decided minority for the near future. And the Court itself undertook something of a tactical retreat. A narrow majority of Justices refused to extend busing to the suburbs in 1975, and lower courts gradually permitted busing decrees to unwind in subsequent years. The Court backed off on the death penalty in 1976, and even began to backpedal a bit on abortion, allowing for some restrictions. The ambiguous 1978 *Bakke* decision on racial preferences muddied those particular waters as well. And Jimmy Carter had no opportunity to appoint any new Supreme Court Justices, which perhaps made the whole issue less pressing in the 1980 presidential campaign than would otherwise have been the case.

Still, liberal activist judges were a concern of Ronald Reagan and of his supporters, and it seemed possible in 1981 that a new assault could be launched against the imperial judiciary. But the effort was half-hearted and ineffective. Reagan used his first appointment to add Sandra Day O'Connor to the Supreme Court in 1981. The rhetorical critique of the court by Attorney General Edwin Meese in 1985-86 failed to gain political traction. And then the Supreme Court nomination of Robert H. Bork, the single most prominent critic of the imperial judiciary, went down to defeat in the Senate in 1987.

The Bork defeat remains the most important and decisive setback in the attempt to rein in the imperial judiciary over the last decades. It is not just that Bork failed to get on the Supreme Court, and that Anthony Kennedy went on in his place. It is that critics of the imperial judiciary lost, or were perceived to have lost, the public debate. Anti-Bork Senators—Democrats and Republicans alike—paid no price for opposing him. The Reagan White House showed little interest in dwelling on the defeat, or in drawing public lessons from it. The succeeding Bush administration was even happier to move on.

As was, apparently, everyone else. Attempts to

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overturn the Court's flag-burning decision fizzled. For his first vacancy, George H.W. Bush nominated David Souter. Meanwhile, the successful challenges to the Court were coming from the Left. In the late 1980's, the Court had interpreted certain provisions of the 1964 Civil Rights Act somewhat narrowly. Congress rushed to overrule the Court's "conservative" statutory interpretations, and, after some resistance, President Bush and the great majority of Republicans acquiesced. This set the pattern for the 1990's, when, for example, Republican governors and legislators in state after state did little or nothing to restrict the use of racial preferences by state institutions. It thus should have come as no surprise this year that the Court majority was unwilling fundamentally to take on racial preferences, when even conservative elected politicians had shied away.

Meanwhile, although Clarence Thomas (barely) made it on to the Court in 1991, his attackers, too, paid no political price for their assault on his person. Indeed, one of the few Democrats who supported Thomas, Senator Alan Dixon of Illinois, lost in a primary challenge in 1992. Bill Clinton of course won the presidency that fall, and his first Court nominee in 1993 was Ruth Bader Ginsberg, who was every bit as ideological a figure as Bork, and should have been as controversial. The failure of conservatives to raise any appreciable fuss over her nomination spoke volumes about the asymmetry of the larger fight over the courts: the Left has been far more willing to play brutal partisan politics, and since it has also controlled the law schools and the elite media, it can dominate the debate in the circles of "respectable" opinion as well.

In the next few years, the Court struck down federal term limits and the Colorado initiative limiting gay rights. Almost no Republicans succeeded, or even much tried, to make a political issue of these overrulings of democratic choices. Then, in Vermont, the state Supreme Court virtually required the legislature to institute civil unions for homosexuals. The legislature and the governor complied, and any backlash was muted. That governor, Howard Dean, is now the leading Democratic candidate for President, and though he signed the civil-unions legislation in the dark of the night, he now boasts about it before Democratic primary audiences. Meanwhile, the White House visibly heaved a sigh of relief earlier this summer when there was no Supreme Court vacancy, because it was worried about a fight on abortion, race, gay rights—all the issues we have allowed the Court to resolve.

So is a revival of constitutionalism hopeless? Perhaps not. The current, unprecedented Democratic filibusters in the Senate of several certifiably well-qualified Bush appellate-court nominees may prove a key moment of liberal overreaching. Can the Democratic party really sustain the position that no federal judge should be confirmed if he has, as one Democratic Senator complained, "deeply held" (i.e., conservative) moral beliefs—even if the nominee's legal qualifications are impeccable and his public record distinguished? Furthermore, it is hard to see how the courts, and the Court, can fail to be a big issue in the 2004 presidential election, with the next President likely to be in a position to make at least two appointments, perhaps more. And what if the Massachusetts Supreme Court requires the legalization of gay marriage?

The Bork defeat occurred almost a generation ago. Perhaps the momentum is about to shift. But the obstacles remain great. Since the Left believes law is just politics, it plays judicial politics more ruthlessly than do conservatives. And because the Left is so aware of the judiciary's key role in enforcing and sustaining left-wing cultural hegemony, and in blocking even minor conservative victories, it will fight bitterly.

Still, if 2002-2003 was, as Michael Greve of AEI has put it, "the term the Constitution died," maybe now is an opportunity for fresh thinking and bold action to revive constitutionalism. Have the results of ideological and results-oriented liberal jurisprudence—for example, requiring the removal of the Ten Commandments from a state courthouse—finally gotten so out of hand as to make possible, at last, a return to first principles? Could 2004 be the year constitutionalism is reborn? Could a Bush second term transform the judiciary in the way FDR's second term did?

Not likely. But, perhaps, possible.

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Sanford Levinson

I am appalled by a number of recent Supreme Court decisions that adopt an almost antebellum view of "state sovereignty" and limit congressional power to protect vulnerable minorities (such as the disabled). And, of course, there is *Bush*

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v. *Gore*, ably criticized in these pages by Gary Rosen (November 2001). Nonetheless, I am unwilling to accuse the current Court majority of "subverting" the Constitution. I was outraged during the 1980's by the savagery of some of the criticisms directed at Justice William Brennan. Going well beyond disagreement, some critics implied that he self-consciously subordinated his obligation of constitutional fidelity to his desire to promote his liberal views. This was scandalously unfair. It is equally unfair to level similar accusations at conservative Justices with whom I often disagree. (*Bush* v. *Gore* may be an exception.)

There are various legitimate approaches to constitutional interpretation, especially if legitimacy is defined by the actual performance practices of well-trained lawyers and judges, and the current majority's arguments certainly meet this standard. Honorable people can in good faith disagree, even vehemently, on what the Constitution means. One can oppose a point of view—and, indeed, advocate that the Senate refuse to confirm nominees with objectionable points of view—without suggesting that adherents of such views are "subversive."

What most angers me about the current Court—and what is most genuinely "innovative"—is its claim to enjoy a monopoly of constitutional wisdom. In my book *Constitutional Faith*, I distinguish between "catholic" and "protestant" approaches to institutional constitutionalism. A catholic approach emphasizes the hierarchical authority of a given institution. A protestant (or "talmudic") approach, by contrast, recognizes the existence of multiple interpreters, with constitutional doctrine at any given time being the outcome of a complex conversation among more-or-less equal interpretive partners (and adversaries).

The current Court is "papalist" in the extreme. The late Alexander M. Bickel once spoke of the Court as leading a "vital national seminar," but our current seminar increasingly consists of a judicial monologue, with grades dependent on agreement with the Court's own views. Today's majority displays a barely concealed contempt for the possibility that Congress has some role to play in determining the meaning of the scarcely self-evident words of the Fourteenth Amendment.

Although the claim of exclusive judicial authority has been advanced most insistently in the past decade, it can be traced to a number of important Warren Court cases, including *Cooper* v. *Aaron* (the Little Rock school case) and *Nixon* v. *U.S.* (the tapes case). There is certainly responsibility to be assigned both to liberal and conservative Justices and, just as relevantly, to their respective academic acolytes.

Both conservatives and liberals are devoted to robust, albeit conflicting, notions of constitutional meaning vigorously enforceable by courts against legislative opposition. No Justices on the current court and relatively few academics adopt the notion of constitutional minimalism (sometimes called "judicial restraint") identified with Felix Frankfurter (and even Frankfurter, of course, supported the Warren Court's signature decision in *Brown* v. *Board of Education* and signed the opinion in *Cooper* v. *Aaron*). A devotee of such restraint might well have upheld both of the Michigan affirmative-action programs *and* the egregious Texas sodomy law, on the grounds that both policies represent the outcome of relatively democratic political processes and that the Constitution does not speak with sufficient clarity to justify judicial intervention. Not a single Justice adopted such a position; conservative activists would have eliminated affirmative action, even as more liberal activists were unwilling to countenance the legal validity of the Texas statute.

IT SHOULD go without saying that there are "circumstances in which the Supreme Court is justified in reaching beyond its own precedents." The most obvious such circumstance is when one believes that the earlier decision was mistaken. Whatever the importance of precedent, no American, liberal or conservative, has ever viewed it as the end-all and be-all of legal argument.

What makes precedent truly interesting as a form of legal argument is that, as Jeremy Bentham noted almost two centuries ago, it seemingly requires adherence to what one believes to be stupid, counterproductive, or otherwise mistaken decisions. If, after all, one admires the earlier decisions, one is not following precedent; one is simply congratulating the earlier Court for having gotten it right. What is truly irrational is to feel tightly bound by precedents, even if one accepts the view that one ought not overrule them lightly.

It is not clear to me what "reaching beyond . . . the Constitution itself" means. If this suggests that legal argument should be conducted entirely within the "four corners" of the text of the Constitution, then there is the obvious embarrassment that well within these corners is language (in both the Ninth and Fourteenth Amendments) directing an interpreter's attention to unenumerated rights, including the "privileges or immunities" of United States citizenship. If one ignores this language, one

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is not remaining "within" the Constitution, one is reducing it.

This language is, to be sure, highly indeterminate. The indeterminacy might counsel certain kinds of judicial modesty, but that is an *institutionalist* argument; it does not signify that the constitutional interpreter as such need not be concerned with the meaning of such terms as "privileges or immunities." (To return to my first answer, one of the most objectionable things about the current majority is its impatience with the very idea that Congress might have a useful role to play in providing content to such terms, or to the equally mysterious command of "equal protection of the laws.")

A last word on going "beyond the Constitution": Jefferson and Lincoln are only the most prominent Presidents who have in effect defended going beyond the Constitution when great national exigencies demanded it (just as the Philadelphia Convention clearly went beyond the Articles of Confederation in simply ignoring the command that any amendment be by unanimous consent of all of the states). Indeed, no question is more central to the very enterprise of "constitutionalism."

This is seen most dramatically in contemporary debates about the treatment of American citizens (and others) who have been declared, by little more than fiat, "illegal combatants" and, therefore, deprived of basic features of traditional American justice, including access to a lawyer or the elemental ability to gain evidence relevant to one's defense. "Disappearances" similar to those that occurred in Chile and Argentina could indeed happen here, and this possibility should scare us far more than anything the Supreme Court has done (unless, of course, the Court chooses to emulate Michael Luttig of the Fourth Circuit and declare that the President is basically above constitutional constraint when fighting the war against terrorism).

As for looking to transnational and international norms in trying to discern what such notions as due process or equal protection might mean, I see no harm in this. One might well say that a clearly expressed "local norm" ought to trump an international norm, but if we view the relevant constitutional text as quite indeterminate, then why should judges not look to other courts to see how they confronted similar issues?

After all, state courts within the United States often look to other state courts—not because a California court believes itself obligated to follow New York law but rather because a properly humble judge finds it useful to see what colleagues elsewhere have done. Similarly, no one suggests that the views of the European courts should be controlling, only that they provide potential insight. We might take a leaf here from the emphasis in *The Federalist* on "experience" as a guide, and from James Madison's own emphasis in his writings on comparative government. Publius would undoubtedly have found it unbearably parochial to be told that we in the United States can learn nothing from the experience of other countries. So should we.

I am skeptical of any proposals "to limit the power of the Court" if this means, for example, new jurisdictional constraints. What I do strongly support is eliminating life-tenure for federal judges. Whatever might have been its appeal in the late 18th century, there is almost nothing to be said for it today. Judicial independence could be protected by single, nonrenewable, eighteen-year terms (which would allow a new appointment to the Supreme Court every two years), followed by full pensions. Steady turnover on the Court would guarantee the arrival of new Justices likely, for better and worse, to reflect changes in public opinion, including opinion about the legitimate role of the Court itself.

No one, however, should believe that any process of appointment or jurisdictional limitations would still the often bitter debates about constitutional interpretation. The Constitution is full of what Justice Robert Jackson termed "majestic generalities," and it is quixotic to expect a consensus on their meaning. Practically speaking, the best ways to guard against judicial imperialism are, first, to assure a greater diversity of judicial perspectives through more frequent appointments and, second, to resist the "papalist" claims of judicial authority that, if taken seriously, would identify the Court with the Constitution.

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Dahlia Lithwick

The hue and cry over our "imperial judiciary" tends to be a post-hoc phenomenon. A wide array of unrelated judicial behaviors is condemned as "imperial," but, strangely, this condemnation comes only in the wake of very particular court de-

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cisions, the results of which are unsatisfying to critics. A quick search on the Internet reveals that in recent months "imperial judiciary" has been invoked to describe at least one of the following four phenomena: an unelected judiciary usurping the role of a popularly elected Congress or state legislature or both, thus subverting the will of the majority; a court decision wholly unmoored from an "originalist" or strict-constructionist interpretation of the Constitution; a court whose members go about the business of judging by advancing their personal agendas and ideologies; elitist, arrogant judges not content merely to interpret and clarify the law but instead acting as a "super-legislature," making up new law from the bench.

While any one of these sins is enough to get the Jeremiahs steamed up, it is rare to see all four at play in any one case. Indeed, *Roe* v. *Wade* notwithstanding, the most egregious example of a jurisprudential grand slam—i.e., a court disregarding the will of the majority *and* the Constitution, voting personal ideologies *and* inventing new law—was the Supreme Court majority opinion in *Bush* v. *Gore*.

And while Justice Antonin Scalia famously wrote, in his furious dissent in the 1992 abortion case of *Planned Parenthood* v. *Casey*, that "the imperial judiciary lives," he was excoriating his brethren not for any of the above evils but for their unpardonable sin of adhering to *stare decisis*: the doctrine that cautions courts to *avoid* overturning established legal precedent. In short, in *Casey* he used the phrase not to denounce judicial activism but, on the contrary, to criticize jurisprudential restraint.

The real truth is that most courts engage in most of the four named behaviors most of the time. Anyone who tells you differently is either an idealist or Scalia. Only when the legal result is unpleasant do the words "imperial judiciary" get thrown around. A good example is the Supreme Court's reasoning in the two Michigan affirmative-action cases, *Gratz* and *Grutter*. Conservative critics promptly complained of judicial activism: the Court, they said, was ignoring the plain meaning of the anti-discrimination amendments to reify a "diversity" justification for affirmative action. But an alternative reading is equally possible: honoring the conservative doctrine of *stare decisis*, a majority of the Court respectfully deferred to the will of the state of Michigan—which had found a compelling interest in continuing these programs.

Similarly with *Texas* v. *Lawrence*, in which our elite imperialist Justices were quickly characterized as having invented a right to privacy from the ether. But the decision could as readily be viewed as one in which a respectful bench enshrined a right recognized by the majority of the American populace for years now. Had the shoe been on the other foot—to use the Alan Dershowitz test—and had the Court *disregarded* the overwhelming preferences of the people in the name of the power of constitutional review, critics could more legitimately have cried "imperial judiciary," just as they did when, in *Romer* v. *Evans* (1993), the Court struck down a Colorado state constitutional amendment repealing local gay-rights laws.

It is, in any case, easy to criticize only *Gratz*, *Grutter*, and *Lawrence* as examples of Supreme Court imperialism. Doing so, however, ignores much of the rest of the past term's astonishingly activist jurisprudence. Take *American Library Association* v. *United States*, in which the same Court that has always favored First Amendment rights of free speech over congressional concerns about pornography in Internet cases determined that Congress could do a better job than local librarians at keeping smut out of the hands of children. Or take *State Farm* v. *Campbell*, in which Justice Kennedy set about "making law" by explicitly setting a permissible numerical range for compensatory awards for punitive damages. Or *Nevada Department of Human Resources* v. *Hibbs*, where the Court put the brakes on its own "federalism revolution" and approved Congress's authority to enact the Family and Medical Leave Act, thus allowing state employees to sue the states.

Examples abound. Suffice it to say that, in advancing the claim that this is an imperial Supreme Court, one cannot point exclusively to the cases in which liberal results won the day. If we plan to tar and feather the Rehnquist court, let us at least agree to tar all of its civil-liberties decisions with the same brush.

THERE ARE two, related, factors behind the sweeping activism of this Rehnquist Court. Justice O'Connor is the first, in that she has become the single most important member of the court. This is so not only because she routinely casts the crucial swing vote in the majority of close cases each year—during the most recent term she cast thirteen out of the fifteen deciding votes in 5-4 cases—but also because she is the architect of this Court's decidedly unrestrained form of judicial restraint.

O'Connor has become famous for her tendency to decide cases narrowly, more in the manner of a

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biblical judge than of a Justice forging new precedent. Her case-by-case approach means that, by necessity, there is little "law" that flows from her decisions. There is only what O'Connor thinks in that specific case. Her views on abortion doctrine, church-state doctrine, the gerrymandering cases, and affirmative action all come down to whether the given facts move her. Appellate briefs are written to sway her, oral argument exists to persuade her, and, after an O'Connor opinion has been produced, confusion reigns in whole areas of the law.

By definition, this means that the role of the judiciary becomes elevated. Neither Congress nor the states can know in advance whether they will be smiled upon the next time around. O'Connor knows best. If there is indeed an imperial judiciary, she is its empress.

Feeding into this is the second factor—namely, the myth of the Rehnquist Court's judicial restraint. Simply because a pack of Court decisions have struck a blow for federalism or states' rights does not mean that states are more powerful than they once were. What were cases like *Lopez* or *Morrison*—federalism decisions invalidating democratically enacted acts of Congress—if not examples of the Rehnquist Court *overriding* the democratic process by judicial fiat? In fact, this supposedly restrained Court has overridden acts of Congress at twice the rate of the "wildly activist" Warren Court. With its new, Eleventh Amendment jurisprudence immunizing the states from the reach of federal law, the Court has now set itself up as the arbiter of when Congress really *really* means what it says it means.

The simple laws of zero-sum physics tell us that whenever a Court takes away rights with one hand (from the states, from Congress, or from the lower courts), and gives away rights with the other (to the states, or back to Congress, or back to the courts), it is behaving imperially. Judicial imperialism thus has nothing to do with liberal results in specific cases, and everything to do with the heavy-handed way in which the Supreme Court bosses around the other branches of government.

But is this a crisis for democracy? I doubt it. The system of checks and balances exists to protect against a too-powerful judiciary, just as it corrects for an over-powerful legislature (the fate toward which those seeking to end judicial review are barreling rather heedlessly). Nor is there anything new or radical about the way the Supreme Court is behaving right now. Alexander Hamilton, in *Federalist* 78, urged that limits on the legislature "can be preserved in practice no other way than through the medium of courts of justice." Granting the courts the power of constitutional review has been with us since *Marbury* v. *Madison* was decided in 1803. As for the fact that the courts decide most of the most pressing social and political issues of the day, Alexis de Tocqueville observed in 1831 that, "there is hardly a political question in the United States which does not sooner or later turn into a judicial one."

Indeed, judges have been deciding cases without regard for the law ever since King Solomon ruled that the contending parties should split that baby. What aspect of today's crisis over the "imperial judiciary" is, therefore, new and terrifying? Nothing, it seems, but the nomenclature.

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Jeffrey Rosen

This magazine has distinguished itself as one of the few conservative journals to denounce judicial activism—by which I mean nothing more than the failure of courts to defer to legislatures—when committed by judges on the Right as well as the Left. From the other side of the political spectrum, my own magazine has tried to be similarly evenhanded in opposing judicial supremacism wherever it occurs. This has a long history. Beginning in the Progressive era, under such editors as Learned Hand and Felix Frankfurter, the *New Republic* argued consistently for deference to state and federal economic regulation. In the Warren and Burger eras, under Alexander M. Bickel's guidance, the magazine questioned the excesses of the Court's interventions in the culture wars—most notably in *Roe* v. *Wade*—while remaining politically prochoice. And for the past decade, during which I have had the privilege of being legal-affairs editor, it has tried to remain true to the same restrained tradition. We have argued for judicial abstinence across the board, regardless of whether we favor the political results, from *Casey* v. *Planned Parenthood* and the right-to-die cases to *Bush* v. *Gore* and the affirmative-action cases (just how is *Grutter* an example of judicial activism, anyway?) to the most recent example of judicial imperiousness, *Lawrence* v. *Texas*.

What has been striking, and dispiriting, is how

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few consistent allies have joined the judicial-abstinence crowd in our by now quixotic campaign against the imperial judiciary. As the published reaction in COMMENTARY to Gary Rosen's article on *Bush* v. *Gore* shows (see the March 2002 issue), most conservatives tie themselves in knots to defend judicial activism when they like the results and to denounce it when they do not. And as the reaction to *Lawrence* and, earlier, to *Roe* has shown, liberals have been no less selective in their outrage at judicial adventurousness. In short, there does not seem to be a large constituency—neither on the courts, nor in the political arena, nor among law professors—for principled abstinence, and for this unhappy but unsurprising state of affairs both liberals and conservatives deserve more or less equal blame.

Has the Supreme Court's bipartisan embrace of judicial supremacism "subverted the constitutional order," the editors ask? This formulation, I think, is a little too extreme. As a descriptive matter, the Supreme Court throughout its history has tended to follow rather than to challenge the broad currents of national opinion. Even during the Warren era, most of the Court's interventions—most notably in the school-desegregation, school-prayer, obscenity, and sexual-discrimination cases—were popular with the country as a whole and resisted only briefly by Southern outliers who soon admitted defeat. It was not until Congress committed itself to fighting discrimination that meaningful desegregation and sexual integration occurred. The Courts, in other words, have a limited ability to precipitate social change, even when they presume to lead rather than follow.

The Rehnquist Court has been similarly canny both in picking and in conducting its fights, which is why the majority of its decisions have been popular with the country as a whole. When the Court has rooted its most controversial decisions in relatively solid constitutional arguments—as in the school-prayer, obscenity, and anti-miscegenation cases—the losers could understand and eventually accept the constitutional principles at stake, even if they disagreed with particular applications. As for those rulings—from the decision to uphold *Roe* to the decision to uphold *Miranda*—defended on thin constitutional grounds, these failed to inspire a national political backlash because they reached results that national majorities accepted.

The two exceptions have been the original *Roe* decision and *Lawrence*, both of which rest on especially shaky constitutional grounds. In both cases, the Court reached ahead of national opinion as a whole and triggered important political backlashes. But both *Roe* and *Lawrence* also confirm that the courts have limited ability actually to subvert the constitutional order. When a deeply felt current of popular opinion feels thwarted, it can always try to force a judicial retreat.

The conservative counterreaction to *Roe* ultimately failed in its attempt to force such a retreat because, by 1992, a majority of the country had come to accept the moderate compromise that *Roe* represented—namely, that early-term abortions had to be protected and late-term abortions could be restricted. The reaction to *Lawrence* may turn out to be similarly mixed. Although there is no national constituency today for reviving sodomy laws, the expansiveness of Justice Kennedy's majority opinion, combined with expected lower-court decisions recognizing a right to gay marriage, may put some wind behind the sails of a constitutional amendment to define marriage as the union of a man and a woman. The fate of that amendment, in the end, will be determined not by the courts but by how strongly the American people feel about the issue.

All of this is to say that, ultimately, national majorities will have their way, and the Court cannot obstruct them for very long, regardless of whether or not it acts in a principled fashion.

WAS THE Court wrong to appeal in *Lawrence* to an "emerging democratic consensus" in America and Europe? I certainly think so. There may be some role for recognizing a shift in tradition when the shift is overwhelming and undeniable, as in *Griswold* (1965), where Connecticut was the only state in the Union to forbid the use of contraceptives. Even Justice Scalia has acknowledged that state constitutional amendments might be legitimate evidence of a changing national consensus about what counts as cruel and unusual punishment. But the Court in *Lawrence* was remarkably freewheeling in detecting an emerging consensus from the fact that only thirteen states continue to ban sodomy today, as opposed to the 26 states that had done so in 1986.

This statistic confuses legislative and judicial repeals. In fact, only four state legislatures chose to repeal the bans during the past two decades, while eight states saw their bans struck down by state courts, often under the same expansive "privacy" reasoning that the Court failed to defend in *Lawrence*—hardly clear and convincing evidence of an emerging democratic consensus. Last year, in

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Atkins v. *Virginia*, the Court was similarly freewheeling when it managed to find a national consensus forbidding the execution of the mentally retarded after noting that fewer than half of the 38 states that allow capital punishment had recently passed laws forbidding the execution of the mentally retarded.

The Court's glibness in detecting a national consensus before one has actually materialized suggests the special dangers of looking to international authorities for evidence of changing American beliefs. In pluralistic societies, there is so much local variation in opinions on important questions involving the boundaries between the public and private spheres—just compare the American, British, and German attitudes toward surveillance cameras—that abstract appeals to an international consensus threaten to airbrush away the very real differences in people's values, making democratic evolution through the political process impossible.

As for proposals to limit the power of the Court, these, throughout American history, have tended to come from sore losers. The failed proposal by turn-of-the-20th-century Progressives to require a two-thirds vote when the Court struck down acts of Congress, and to allow supermajorities in Congress to overrule the Court, seemed like a confession of angry despair, much like similar proposals today from the other side of the spectrum. Besides, radical court-stripping reforms are generally unnecessary as well as counterproductive, as FDR learned too late. If the country cares enough about an issue, the Court will retreat on its own.

If there is no constituency for judicial abstinence, what can be done to persuade the courts to restrain themselves? In an ideal world, we could try to reconstruct a principled bipartisan consensus about the virtues of judicial deference to the legislatures. But such a consensus has existed in American history only at times when the Court has actively frustrated the efforts of a majority of the people to pass laws that are important to them. Perhaps the gay-marriage debate will precipitate a similar consensus today, but I fear that at this point, both sides are too tainted by their own opportunistic use of the courts to lay down their arms.

An army of interest groups on the Left and the Right has been mobilized to demand from the courts the victories they are unable to win politically; these groups have distorted the politics of judicial confirmation in a way that makes it highly unlikely a principled defender of abstinence would be appointed to the bench, let alone confirmed. In other words, both liberals and conservatives still expect too much out of the courts to realize that both sides might do better with fair fights in the political arena. In the meantime, enclaves like Commentary and the *New Republic* can continue our embattled crusade. We need allies. Join us.

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Cass R. Sunstein

The Supreme Court was right to uphold the affirmative-action program at the University of Michigan Law School. It was wrong to invalidate the affirmative-action program used by that university at the undergraduate level. The Court overreached in striking down the Texas sodomy law. But it would be hysterical to suggest that the Court has subverted the constitutional order, and there is no reason to take new steps to reduce its authority. Though the Rehnquist Court shows an unmistakable tendency to (mostly) right-wing activism, the situation is hardly grave.

To explain these claims, it is necessary to back up a bit.

Begin with some definitions. A decision reflects *judicial restraint* if it upholds practices under constitutional attack. A decision reflects *judicial activism* if it invalidates practices under constitutional attack. By these definitions, a decision that strikes down campaign-finance legislation counts as activist. A decision that upholds restrictions on abortion counts as restrained.

These definitions have a large advantage: neutrality. They are purely descriptive. If we define activism and restraint in these terms, we will not complain that decisions are "activist" only if they depart from our own view about how the Constitution is best interpreted.

Of course, a neutral definition, simply because of its neutrality, will not include any evaluation of what the Court has done. So let us acknowledge the possibility of *unjustified activism* and *unjustified restraint*. Unjustified activism occurs when the Court invalidates a practice that should be upheld under the best interpretation of the Constitution. Unjustified restraint occurs when the Court upholds a practice that should be invalidated under that interpretation.

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Finally, some decisions of the Court are not merely unjustified; they are *illegitimate*. A decision is illegitimate if it is not plausibly connected with any of the usual sources of constitutional law: text, structure, history, or precedent. By this definition, some decisions show *illegitimate activism*, whereas other decisions show *illegitimate restraint*.

Activism and restraint come in both conservative and liberal forms. In its early-20th-century decisions invalidating maximum-hour and minimum-wage laws, the Court displayed a form of illegitimate conservative activism. The Warren Court displayed liberal activism, sometimes unjustified and sometimes illegitimate. Whether conservative or liberal, illegitimate activism is an extremely serious source of concern.

IN *Grutter* v. *Bollinger*, the Supreme Court upheld an affirmative-action program for law-school admissions at the University of Michigan. In *Gratz* v. *Bollinger*, the Supreme Court invalidated an affirmative-action program for undergraduate admissions at the same university. In *Lawrence* v. *Texas*, the Court invalidated a Texas law forbidding sodomy between consenting adults.

The first point to notice here is that of the three opinions, *Grutter* is the only restrained one. It respects the prerogatives of nonjudicial institutions; it refuses to use judicial power to overturn the decisions of countless educational institutions throughout the nation. The activist decisions are *Gratz* and *Lawrence*.

The second point to notice is that, of the nine Justices on the Court, not a single one took the consistent path of restraint, which would have been to uphold the two affirmative-action programs *and* the Texas sodomy law. The third point to notice is that both activist decisions, *Gratz* and *Lawrence*, build on decades of judicial precedent and can be read quite narrowly. Both of them overreach, but they are hardly illegitimate.

The affirmative-action cases present the most obvious ironies. The most conservative members of the Court, Justices Scalia and Thomas, purport to be committed to "originalism" as an approach to constitutional interpretation. They seek to understand the Constitution in accordance with its original meaning. But when it comes to affirmative action, originalism apparently goes down the drain. Neither Scalia nor Thomas bothered to investigate whether the Fourteenth Amendment, as originally understood, forbids affirmative action. Their silence is deafening. In fact, careful historical studies suggest that the drafters and ratifiers of the Fourteenth Amendment were entirely comfortable with race-conscious programs designed to help African-Americans.

Perhaps the historical evidence has been misread. What is stunning is that Scalia and Thomas did not address it. Thomas's eloquent opinion in *Grutter* emphasizes the view of only one historical figure: Frederick Douglass. To say the least, Douglass was not a drafter of the Fourteenth Amendment, and his views about racial equality are not a good indicator of the original meaning of the amendment.

Suppose that we reject originalism and adopt some other approach to constitutional interpretation. The problem is that it is hard to identify *any* approach that would justify a Supreme Court decision forbidding affirmative-action programs as they have been voluntarily adopted by countless institutions, both civilian and military, and at every level of government. The Court was right, in *Grutter*, to refuse to impose a principle of color-blindness that lacks any constitutional basis. Such a decision would be an extraordinary form of judicial activism, perhaps exceeding that in *Roe* v. *Wade* itself. It is ironic indeed that many conservatives have been calling for it.

In principle, there are good reasons to object to affirmative-action programs, some of which fail to promote their intended purposes and do more harm than good. But there is no good argument that courts should invalidate those programs on constitutional grounds. The question of affirmative action is under intense scrutiny at all levels of government. If the elected branches or the people want to do away with such programs, they are entitled to do so.

I do not contend that the *Gratz* decision was illegitimate. The majority was building, not implausibly, on its own precedents, and *Gratz* is a narrow ruling that does not foreclose a degree of experimentation at the national, state, and local levels. Nonetheless, the decision was wrong.

IN *Lawrence*, the Court overruled its own 1986 decision in *Bowers* v. *Hardwick* and suggested that the Constitution's due-process clause protects a broad right to engage in consensual sex. The Court referred to evolving social values and to international precedents. As a matter of simple policy, I celebrate the Court's decision. The criminal prosecution of gays and lesbians has no place in a civilized society. But as a matter of constitutional law, there are serious problems.

Usually the Court is reluctant, and rightly so, to overrule its own precedents. In any case, the Court should be reluctant to use the due-process clause as a basis for invalidating legislation that intrudes on liberty or privacy. There was a narrower and more

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cautious ground, emphasized by Justice O'Connor, for invalidating the Texas law. The Court could have refused to decide whether sodomy laws are constitutional as such, and ruled on the basis of its recent precedents that, under the equal-protection clause, a state is not permitted to say, as Texas attempted to do, that homosexual sodomy is forbidden while heterosexual sodomy is not.

Alternatively, the Court could have pointed to an especially disturbing feature of sodomy laws. In practice, these laws have been used for rare prosecutions and as instruments for arbitrary and selective harassment by the police. As the legal scholar Alexander M. Bickel urged decades ago, the Court might strike down the use of such laws on purely procedural grounds. It was unnecessary to refer to emerging social values or to judgments in other nations, judgments of unclear relevance to interpretation of our Constitution. In practice, changing values do influence the Court; this has become a part of our constitutional tradition. But the Court should avoid contentious claims of this kind when it is able to do so.

A principled advocate of restraint could conclude that the Court should have upheld the Texas law. But I believe that it would have been best for the Court to strike it down under one of these narrower rationales. In my view, Justice O'Connor was right to say that a criminal law that punishes homosexual sodomy, while permitting heterosexual sodomy, is difficult to justify under the equal-protection clause. Does *Lawrence* then count as illegitimate? Does it threaten our constitutional order? This seems to me utterly implausible. While the Court overreached, it did not act lawlessly. Aside from *Hardwick*, the Court's own precedents provide a great deal of support for the Court's decision. The *Lawrence* decision can easily be read narrowly, as a decision to forbid the criminalization of consensual sexual activity, in a way that leaves the most difficult and disputed questions to the democratic process.

The important points are the more general ones. It is crucial to distinguish the Court's restrained *Gratz* opinion, upholding the Michigan law school's affirmative-action program, from its two activist ones in *Lawrence* and *Grutter*. In the latter two cases, the Court erred. But we should not overreact. To err is human. What I would like to emphasize here is that it is ironic, and more than a little disappointing, that so few critics of *Lawrence* are also critics of *Grutter*—and vice-versa.

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George Weigel

Perhaps because I expected nothing better, it is hard for me to get terribly exercised over the Supreme Court's decisions in *Grutter* and *Gratz*, the two affirmative-action cases. Yes, these decisions make little constitutional or political-philosophical sense; in fact, they are unhappy reminders that, on these questions, the Constitution now means whatever Justice O'Connor decides it means at any given moment in her perusal of the signs of the times. Yes, *Grutter* and *Gratz* further delay the long-awaited and eminently desirable day (a mere 25 years, Justice O'Connor assures us) when Americans will be judged not by race but by the content of their character and the use they make of their native abilities. And yes, to the degree that *Grutter* and *Gratz* further embed race-consciousness in American public life, they damage our political culture.

But *Grutter* and *Gratz* do not threaten the moral structure of American democracy. *Lawrence* v. *Texas* does.

To put the matter bluntly: among the issues starkly posed by the terms of the Court's decision in *Lawrence* is whether religiously grounded moral argument will be permitted any place in our common deliberation over public policy. An over-reaction? I think not. Here is why.

The Court is often (and rightly) accused of making things up as it goes along. *Lawrence*, however, is different, for *Lawrence* was predictable, and those who predicted an outcome like this some years ago have been shown to be not hysterics of dubious judgment but prescient patriots. For the hard fact of the matter is that *Lawrence*'s core declaration—that the state's sole interest in sexual matters among consenting adults is to protect the unfettered expression of personal autonomy—makes eminent sense. That is, it makes eminent sense *if* you believe, with Justices O'Connor, Kennedy, and Souter in their joint opinion in *Planned Parenthood* v. *Casey* (1992), that "at the heart of liberty is the right to define one's concept of existence, of meaning, of the universe, and of the mystery of human life."

Roundly mocked as a clumsy excursion into metaphysics, this bizarre formulation has been a time bomb waiting to explode for over a decade. With Justice Kennedy's majority opinion in *Lawrence*, the explosion has now taken place. For this "sweet-mystery passage" (as Justice Scalia refers to it in his *Lawrence* dissent) has put tens of millions of faithful Christians and Jews on notice. There is a new and jealous god in the land: the imperial autonomous Self. Those who do not swear

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fealty to this new god are unwelcome in the deliberations of American public life, and their views and their institutions will be under "strict scrutiny"—the assumption being that they are bigots.

As the public debate since *Lawrence* has already shown, the first test of the new doctrine will involve marriage law. For to judge not only by *Lawrence* itself but by the standards the Court now invokes for its decision-making—"emerging" democratic consensus (presumably measured by the Justices and their clerks), evolving "human-rights" jurisprudence in Europe, Canada, and elsewhere (even more imperious than the jurisprudence in our own federal courts)—there is no principled ground on which the ancient understanding of marriage as the stable union of a man and a woman can pass constitutional muster. If the supreme liberty right to be secured by the Constitution is the unfettered expression of sexual autonomy, then on what constitutional grounds are we to "limit" marriage to the stable union of a man and a woman? Why not two men? Indeed, why not any reasonably stable configuration of consenting adults, of whatever sex and number?

Lawrence will also have nasty effects in other arenas of public life. The strict-scrutiny standard means that public education will also be under grave pressure. On what constitutional grounds will a local school district now decline to present heterosexuality and homosexuality as anything other than "lifestyle choices," of no greater consequence than choosing a Springer spaniel over a parakeet as your family's pet? Canadian clergy already confront the possibility that preaching classical biblical sexual morality could leave them open to legal action on grounds of indulging in "hate speech," as their refusal to conduct same-sex "marriages" could render them liable to prosecution for denying a couple its "right to be happy" (in the phrase of a Canadian federal cabinet minister). Given *Lawrence*'s logic and its strict-scrutiny standard, it would be foolish to suggest that something similar is out of the question here.

Then, to go back to where I started, there is the matter of where biblically serious Jews and Christians fit into Justice Kennedy's *novus ordo seclorum*. Instructive in this regard is the fate of morally and religiously serious Catholics in public life. Consider the recent experience of Alabama Attorney General Bill Pryor. Nominated to the 11th Circuit Court of Appeals, Pryor was pilloried by Democrats on the Senate Judiciary Committee this past summer because he thinks *Roe* v. *Wade* was wrongly decided. Pryor had reached that judgment (a judgment once shared by liberal icons like Archibald Cox and Alexander M. Bickel) as a man of logic, an adult knowledgeable about basic science, and a student of constitutional history. His judgment on *Roe* also coincided with the moral teaching of the Catholic Church, of which he is a devout member. For that reason, Pryor was subjected to an inquisition about his "deeply held beliefs" by Senator Charles Schumer of New York, who seems to think that only *his* deeply held beliefs about the abortion license created by *Roe* are to be countenanced.

And how did Schumer come to his position, which suggests that serious Catholics who bring religiously informed moral arguments to public life have no place on the federal bench—even if, like Bill Pryor, they have articulated those arguments in an accessible moral grammar and vocabulary that any serious person can engage? I suggest that Senator Schumer got there via the "sweet mystery of life" passage in *Casey* and its toxic effect on our public life.

Which means that Bill Pryor is not the only one at risk here. What was done to Alabama's Catholic attorney general (elected to that office, incidentally, in a state where Catholics make up just 3.5 percent of the population) could as easily happen to an Orthodox Jew or an evangelical Protestant with the same views on *Roe*. Would a similar trajectory be at work with *Lawrence*? What would prevent it, if the Court continues to construe liberty as license and then enshrines license as *the* constitutional trump?

WHAT, THEN, to do? On the gay-marriage implications of *Lawrence*, conservatives rightly respectful of the Constitution will be tempted to argue against the proposed Federal Marriage Amendment, on several grounds: that marriage has traditionally been a state matter (and an amendment would further erode federalism); that such an amendment would trivialize the Constitution; that there must be other remedies.

Perhaps there are other remedies. I doubt it, but the burden of proof, post-*Lawrence*, now rests with those who believe they exist. As for trivializing the Constitution, yes, it is a sadness that things have come to this; but one way or another, the Constitution is going to be amended with respect to marriage, and what is preferable, a Constitution tacitly amended by judicial fiat or a Constitution amended through proper constitutional procedures? As for the further erosion of federalism, that, too, is an unhappy prospect; but the homosexual movement has made no secret of its intention to federalize the question of marriage and has now been given a powerful weapon to do so in *Lawrence*, which seems like-

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ly to buttress claims that gay "marriages" or "civil unions" recognized in one state must be recognized in all states under the "full faith and credit" clause. I see no constitutionally serious way to meet this challenge, absent a Federal Marriage Amendment.

Beyond the marriage issue lies the question of revitalizing the democratic process so that issues like marriage and abortion are decided by the people who should decide them and in the forums in which they should be decided: that is, by the people of the United States, acting through their duly-elected representatives. If we are not to find ourselves in the ludicrous position of having to meet every act of federal judicial activism with yet another constitutional amendment, then surely it is time for a serious discussion of how to invoke Article III's provision that Congress can declare "exceptions" to the Supreme Court's appellate jurisdiction, in this case precisely to roll back the hegemony of the imperial judiciary.

I realize that this would take more courage than is usually found on Capitol Hill. But it is not easy to see another remedy that, over the long haul, will prevent the U.S. Constitution's becoming analogous to the constitution of a banana republic. Happily, taking Article III seriously might just have the blessed effect of restoring a measure of robustness to the noble American experiment in democratic self-governance.

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James Q. Wilson

When the Supreme Court renders an important decision, the reasons it gives are often more important than the choice it has made. Nowhere is this clearer than in the recent case of *Lawrence* v. *Texas* that struck down that state's anti-sodomy law. Though I was delighted to see the law disappear, I was disturbed by the reasons the majority supplied for effecting that disappearance. The Court greatly widened the right of privacy, loosely based on the due-process clause of the Constitution, and justified this right with scarcely anything more than rhetorical flourishes.

The majority repeated in 2003 a view it had first expressed in 1992 in *Planned Parenthood* v. *Casey*, where it emphasized its commitment to *Roe* v. *Wade* in these words: "At the heart of liberty is the right to define one's own concept of existence, of meaning, of the universe, and of the mystery of life." It reinforced this view by referring to the decision of the European Court of Human Rights, representing 21 European nations, to strike down an Irish anti-sodomy law. It chose to ignore the hostility to sodomy in nations with far larger populations like China, India, Korea, and most African countries.

That some nations oppose sodomy and others ignore it is, of course, irrelevant to the issue. The central question for an American court is whether liberty means the right to define one's own concept of existence and of the mystery of life. This issue, contrary to what some may suppose when they read such loose language, is very large. At stake is whether the Court's majority is now inclined to support the libertarian view that no state has the authority to restrict conduct affecting only one's self and one's consenting partner. If so, this would mean that there could be no state law against prostitution, bestiality, heroin consumption, physician-assisted suicide, or gay marriage because all of these behaviors involve private, intimate actions that harm no human outsider. I find it hard to believe that the Court would apply its new-found policy so broadly; after all, it is not indifferent to political realities. (It did, for example, unanimously strike down a state law authorizing physician-assisted suicides. But would it repeat that decision today?) But then, in 1973 I found it even harder to believe that a right to privacy could support a constitutional right to abortion; nevertheless, it did.

Obviously, the behaviors I have named differ in their moral significance. But the Court seems to be more interested in privacy than in morality. The police power of the states is all about morality; the Court's view is that this concern, along with, presumably, the police power that can give legal effect to it, is unimportant. I think that morality is quite important, though, confronted with a constitutional ban, not all-important. Banning or restricting prostitution makes good sense (one wonders what the Court would have done in the Texas case had one gay man paid the other for his services). Banning bestiality and heroin consumption makes even more sense (I will not make the arguments here, though I wonder at any reader who needs arguments). And allowing states to decide on abortion policy is eminently wise (most large and many smaller states would authorize abortions, albeit with the kinds of restrictions now in place in many European countries).

The Texas sodomy case could well have been decided on grounds that would not have broadened the notion of privacy or weakened the concept of state authority. In her concurring opinion, Justice O'Connor pointed out that the Texas law, since it applied only to

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homosexuals and not to heterosexuals, *could* have been struck down for denying to people the equal protection of the laws. Writing in the *New Republic*, Jeffrey Rosen endorsed her view, and I join him. This would have left the states free to ban sodomy for heterosexuals and homosexuals equally—something that the vast majority of states would, of course, be most reluctant to do—or otherwise use their police powers with respect to many matters of supposedly private conduct, provided only that they did not infringe an explicit provision of the Constitution.

Justice Scalia, in his dissent, rejected not only the majority opinion but O'Connor's point. Apparently he thinks that the use of the equal-protection clause would open the door to homosexual marriages: if a law tried to prevent such marriages, the Court might later say that the law denied equal protection to gays and lesbians. O'Connor's (and my) response to Scalia would be this: a law designed to maintain the traditional and near-universal concept of heterosexual marriage, with all that this implies about the complementary relation between the two sexes and the prospect of effective child-rearing, provides a rational basis for making a distinction between heterosexuals and homosexuals with respect to how they live together. And if there is a rational basis for distinguishing between two kinds of activities, then a law making that distinction is not vulnerable to an equal-protection argument.

Scalia was right, however, to observe that a majority of the Court had in this case joined the culture war, "departing from its role of assuring, as a neutral observer, that the democratic rules of engagement are observed." What now remains is to discover whether, given the Court's position on some matters, a democratic engagement is even possible.

I have no wish to punish gays and lesbians; it makes great sense to abolish laws that hinder their private conduct. But surely this could have been accomplished on more economical grounds, ones that would not have opened the door to broader appeals asserting that anything that seems private must be legitimate. This argument, redolent of what Christopher Jencks has called a laissez-fair culture, is eating at what ties Americans together—eating, that is, at our view that we can reconcile individual liberty and social mores in ways that keep the country great.

Even when the right of privacy was being invented by the Supreme Court, it reserved special consideration for heterosexual marriage. The case that authorized the sale of contraceptive materials (*Griswold* v. *Connecticut*, decided in 1965) was about marital privacy, not human privacy. Even after the next case, *Eisenstadt* v. *Baird* (1972), broadened access to contraceptives for unmarried persons, the Court held that the state could still treat extramarital sex and nonmarital sex as evils. After *Lawrence*, all of those genuflections toward marriage have become moot.

The implication of the *Lawrence* case is that we have to find ways of defending heterosexual marriage against the claim, sure to arise, that anybody, under any circumstances, can be "married," provided only that this is the act of mature, consenting adults. One can make a decent, though to me ultimately unpersuasive, case for homosexual marriages. But one cannot, I think, make that case so effectively as to require it to be imposed by judicial order.

We imposed abortion by judicial order, and at a time when some states, like New York, had already legalized it. What we got was endless acrimony, because the judicial order was not the result of balancing competing political interests or adapting laws to the needs and preferences of different states. European nations allowed abortion, but because this was done by parliaments rather than by courts, the laws that were put in place called for various forms of medical consent and parental approval and in some cases imposed strict time limits.

We may commit the same kind of judicial suicide if the Court chooses (as, given the *Lawrence* case, it logically must choose) in favor of homosexual marriages. Endless public debate will be stirred up even though the number of gay or lesbian marriages is likely to be rather small. (In the Netherlands, which legalized same-sex marriages in 2001, fewer than 10 percent of an estimated 50,000 same-sex couples have chosen marriage. In 2002 there were 1,900 such marriages, compared with 85,500 male-female ones.) When Vermont legalized same-sex unions, Vermonters probably adjusted with rather little fussing. But if the Court says that the Vermont practice—or, worse, one that uses the word "marriage"—must become a national norm, the country will be divided deeply and fight about it for years to come.

The Defense of Marriage Act passed by many states will provide no barrier to a Court decision; such acts will become unconstitutional. So now there will be a fight over a Federal Marriage Amendment to the U.S. Constitution. The odds are very great against its passing; although a majority of the country favors reserving marriage for heterosexual couples, it is not an overwhelming majority. The Court is marching us toward the Netherlands—only there, at least, politicians and not six robed jurists made the decisions.

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Fables of the Erotic Other

A Story

John J. Clayton

In a third-rate motel in Venice, California, Jacob Gershom is being nudged out of afternoon sleep. How can he mind? Marya (rhymes with *aria*) sweeps her long golden hair over his chest. And again. And again. Some whipping.

He's been with few women, certainly none like Marya. He's never been a wild boy, never had a girlfriend he couldn't bring home to his religious parents. Jacob is at Columbia Law now, so what's he doing, a week before spring semester, chasing this wild Marya out to LA? Warm afternoon in California, while in what he snobbishly calls the "real world"—New York, Boston, the East coast—it's drear winter. Lying around with her, middle of the week, he keeps his eyes closed so she won't stop. He's damp with sweat, laughing in his belly; a warm breath blows across his nipples and makes him shiver.

"Come on," she half-whispers, half-hums a little made-up rinky-dink tune. "Won't you wake up for me, baby?" Jacob laughs, stretches, presses against her. Yes, he wants her again.

Is it Marya he wants—or the wildness?

She plays at shock: "Oh, well, all right then, if you insist. I mean, what can we do? Jacob? We're just dissolute, aren't we? In*corr*igible." She whispers the word, lips against cheek, so that the long *ore* will warm his ear.

"This isn't what I think of as dissolute," Jacob says, suddenly somber. "Last night—when I came in and found you—*that's* what I'd call dissolute."

He means her weeping, when he'd finally tracked her down through charges to his MasterCard and found her high on something and low on everything else, ashamed and clinging. Where's *that* Marya? Oh, she clung all right. Room stinking of cigarette smoke and sausage smells from a stand by the beach, stained floral carpet, Monet print faded by years of sunlight, the works. She said, "Hold onto me, Jacob. If you hadn't come, I don't know what I would have done. Yes, I do. It was going to be tonight. I know it."

Trashy, phony suicide script, but those are real scars at her wrists. *You think I'm playing?* No, but maybe getting high on risk: the way she feeds off that story she keeps telling, first one way, then another: an abusive stepfather, the illegal stuff he forced her into. The story makes her high, or at least keeps her from crashing.

"You say take care of me. Then you run away. How can I take care of you?"

"I'm Rapunzel, I'm Snow White, I'm some goddamn princess under a spell. Jacob? You're my saving grace. Please."

A little girl begging for ice cream. He was so fetched by this begging look, he could hardly stick to the argument. Was she putting him on? There

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are times when she parodies innocence, plays at being a child, as if to say, *Isn't this what you want me to be? Does it turn you on?* Then there are times when her whole system crashes, and all she has left is a shell, a sign across her eyes: nobody home. But last night, with her eyes so open, so full of longing, the word "tragic" came to him. *Help me.*

"But you run away from me," he says again.

Last night, a little stoned, a little foggy, she shrugged off questions and melded with him. Later, bodies damp, still pulsing, half-dozing, she tapped him and said, "But I *had* to run, baby. His friends wouldn't trust me to keep my mouth shut. He must have told them, finish her. Because," Marya whispered, "see, I just won't do it anymore. I'd rather finish myself." Tears collecting, falling.

"Won't do what? What won't you do? Act as a courier?"

"As a mule," she said. His fingertips ran down her spine, the valley and peak of her hip, as if reading Braille. "That was his word, no joke: mule."

"Carrying what?"

"Currency, diamonds, maybe drugs. I don't know. I think drugs. I don't know, but I'm sure to be spotted. DEA, Treasury, they see a pattern, they're not stupid. Can you imagine me in prison with a lot of lowlifes?" She put her fingers to his lips. "I know. It's not just prison, it's what that life does do to you. You've taught me a lot about my soul. You have, sweetie."

"Your soul!" He grins. "What about my credit card?"

"I'll get you your damned card. You know I'll pay you back. Didn't I last time?" She got out of bed naked and went for her purse. In the sick lights from the motel's neon sign and the street lamps outside he watched her, hungry and depressed, and knew she knew he was watching; as upset as she was, she didn't forget to straighten and sway, shoulders back, hips forward and rolling, palms open, offering herself. That's it, he thought, she lives in my watching and gives her eyes away to me, to everyone.

The credit card was tossed onto the bed. Jacob sat up cross-legged and bent it back and forth until it cracked. "No good anyway. I stopped it. You really went to town."

"I went to town? I was desperate."

"At Saks?"

"I needed things."

"I don't get it, Marya. If you're threatening to kill yourself, why do you need to run? If you need to run, why buy a fancy car and nice new clothes?"

"Fancy! It was a used car. And I'll pay it off—all I charged was the down payment."

TODAY, THIS afternoon, it's a different Marya. No makeup, big eyes, no cynicism. Her voice is full of breath. She says, "I'll convert for you, Jacob. My mother's Jewish, I told you. We'll have beautiful *shabbes* nights. I'll light the candles for you."

It's when she talks like this that he feels sick. He knows the risk he's taking—not the bad guys with guns and money, assuming any of that's true, and not the danger to his career: Jacob has confidence in his ability to convince people he can work at a very high level. The real risk is to his soul. He's running a guerrilla operation into a dark no-man's land—a covert action. The Hasidim speak of entering into evil in order to reclaim the holy sparks. But isn't that putting a fancy façade on a kind of desire he's never come close to before?

What *is* it about erotic love? Why do you yearn so uncontrollably to touch the arch of the foot, her bare upper arm, the hollow where the collar bone meets the neck, the soft down of earlobe? Why, when she puts on a silk scarf, does it become a sacred object? Her eyes, when you can stand to look into them, why do you get so lost? What *is* this?

Over and over he tries to puzzle it out. Is he with Marya for the innocence he is persuaded is hidden in her, or for the wildness she lets loose in him? Maybe, worse, it's her darkness he hungers for, and if, by pretending this is some kind of holy enterprise. . . . Yet there are times, sitting or lying beside her and settling into the hum of meditative consciousness, when he can feel the borders of his energy open like a million gates, and he touches the humming edges of her, takes her in, blurs her soul with his. This isn't erotic; it's something more.

More dangerous.

In his mind's eye, all the way across the country in Brookline, his father shakes his head. *You don't know what you're letting yourself in for. A crazy woman! A good boy like you.* Now a fantasy comes to Jacob, lying with Marya, this afternoon: a vision of Pinhas the son of Eleazar the priest invading the tent where an Israelite man was lying with a Midianite woman, a worshiper of Baal, and skewering both of them through the belly with his spear. This was in the portion he read ten years ago on, God help him, the day of his bar mitzvah. Imagine that spear plunging down through him, through her, their blood soaking the motel mattress.

But then there was the talmudic story he learned long ago at his Jewish high school in Brookline. Once a wealthy merchant heard about a beautiful courtesan who charged 400 gold *denari* as her fee. He sent her the gold and appeared at the appointed

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time. She had built bed upon bed, the top one covered in gold, with ladders of silver and gold, and she, having disrobed, lay on the highest bed, and he began to climb, but he kept tripping on his *tzitzit*—the ritual fringes he wore under his garments—and he wouldn't remove them. Finally the fringes struck him square in the face and he fell to the ground. When the great beauty saw him lying there, she slid down and sat beside him. "What blemish did you see in me?" she asked. And the merchant: "You are the most beautiful woman I have ever seen, but my fringes, which the Lord has commanded us to wear, are like witnesses against me." So the courtesan asked the name of his teacher and his town, and when he had gone she gave away all that she possessed except her golden bed coverings and traveled across the sea to the merchant's town and asked the merchant's rabbi to teach her. She became his proselyte and married the merchant and covered their marriage bed in the gold cloth.

Fables of the erotic Other.

Jacob has fantasies of her redemption. He sees her hovering at the edge; she's taken him there, and he's looked over. In the middle of a loft in Soho, an old factory floor turned into living space, with no lights in the growing dusk, stands a big Harley that had been brought up in the factory elevator. Young men and women dressed in black sit rocking to music he does not know, listening, or not listening, stoned, and, in a back room, shooting up. Nobody says much. He looks for Marya—where has she gone? Upstairs, somebody says. He goes after her. A guy tying off; Marya helping. "I'm out of here," Jacob says, his face hot, hot. She runs after him, catching up halfway down the street. "You're all I've got," she cries.

THE NIGHT they met he'd been dragged by a friend to a gallery opening on the west side. He must have been gawking, not at the paintings but at this forbidden beauty, for suddenly she was standing beside him, saying softly, "Well? So, do I pass?" A black suit, skirt high, mauve thighs, under the jacket a mauve silk chemise.

"You want to go for a drink?" she asked. "Whoever you are, I've decided I can talk to you."

She loved it that he was an observant Jew, a student of Talmud. She loved it that he was going to do poverty law after he passed the bar. "I'm not used to people like you."

The people she *was* used to: when Marya was twelve, she told him, her stepfather started to come on to her. Then he asked her to do a series of little jobs—flying to Paris, coming back with a suitcase: a child, well-dressed, sweetly smiling for the customs inspectors. And so then he had her trapped. She dropped out of school. A couple of times she tried to kill herself—once, she cut her wrists ("look, Jacob") and got sent to a clinic. When she came back, it started all over. That's when she began a career as a model—turning down a full scholarship to Princeton so she could make her own money and get away. And she did—but from time to time the bastard still forced her to serve as a courier.

"And you can't get away?"

"I'm a weak person, Jacob. I'm a slave, but I want to be free."

That first night they made an unspoken pact. He would rescue her; she would let him. And she would teach him things.

God knows, she's kept up her part of the bargain—taught him to swim in the depths, taught him how hard it is for someone to change, taught him not to believe half the things she says. The feelings may be real; the stories are something else again. Once her roommate in the West Village, Carol, said to him, "You're a good guy, Jacob. If you ever want to know about our friend Marya, just ask me." He's never asked; he's never dared.

THIS AFTERNOON Marya tells him good news—Ralph Lauren wants her for a shoot in Malibu. And there's the possibility of a TV commercial. She'll do some modeling, she tells him, pay off the sporty Supra, see what she can work out with her stepfather's "money men," then she'll be back East. "I know you can't wait for me. You've got your classes. You go home, Jacob. Things will cool off. I'll join you soon as I can."

He believes and doesn't believe. Anyway, is it so much better modeling for Ralph Lauren than being a courier for money or diamonds or whatever? Trading on skin and smile? When she comes back from shoots—say, in the Bahamas—her look is distant, cheap. Anyway, he's surprised and not surprised the next day when he returns to the motel from morning prayers—7 A.M. in a small sanctuary at the rear of a synagogue—and she's gone. She's packed up, hasn't left a trace except an old *People*, a lipstick discarded in the bathroom trash, silk panties under the bed. The scent of her, everywhere. And a note, scribbled a little more crudely than her usual graceful calligraphy:

Sweetie,

I'm crying as I write this. I think I'm being followed again. I saw someone downstairs. I'm

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scared. I'm not dragging you into this, baby. If they catch up to me, we're dead. Especially you, because me they need—and I don't care anyway. About me. You think I'm kidding? Just remember Cary Grant helping Eva-Marie Saint up the head of some dead President on Mt. Rushmore—dissolve into him helping her onto the top bunk in a train compartment. We'll get together again, I swear it, when I clear this up. Okay? Don't forget about what it's like, you and me. Only when you're part of me am I whole. Please, leave LA. I'll see you soon in NYC. I know this is crazy. You've been so, so beautiful.

Where could he look for her? It's a wild goose chase, ending in humiliation. But he finds himself driving slowly along Rodeo Drive in Beverly Hills, because that's where she likes to browse. Yesterday, that's where she'd taken him, store after outrageously expensive store, still wearing the dress from Saks that she'd charged on his credit card. She tried on outfit after outfit, and because she knew how to move, to turn, to present herself, and because she was so honeyed of skin, so soft-eyed, her smile so warm, the saleswomen loved her, made a fuss over her, didn't blink when she told them she was "desperate" for a nice dress for London, where he, her husband, was being transferred, or that she needed something she could wear for a few months until she grew . . . too large. He let her blab. Later he asked, "Why?" "Oh, for fun. Jacob, for godsakes, don't always be a prune." She squeezed his hand. "Honey? I don't mean *always*."

Cruising Rodeo Drive, he stops in at a couple of places. They haven't seen Marya. "Should we hold that cashmere dress for her?" "No, I'm afraid not." He stops at a bookstore where her friend Gwynn works, but Gwynn hasn't seen her, either. He walks along the esplanade overlooking the beach in Santa Monica, hoping to see her far below among the exercisers. He thinks about calling her roommate Carol in New York, but Carol must be at work.

Without Marya, the motel is even bleaker than before. In the mid-afternoon he rests on the remade bed, calls the desk to prepare their bill—yes, he knows he'll have to pay for another night. He'll take the red-eye to Boston, see his parents for a couple of days, stay for *shabbes*. His mother will light the candles, she'll bake challah. He'll daven with his father.

Ten minutes from leaving for the airport, she calls. "Jacob? Oh, thank God. Everything's going to be okay." The car, not to worry—she's found a buyer in New York, Carol's boyfriend, he's willing to pay what she paid. "So if you can just drive east with me. . . ."

"And those big bad men running after you to kill you?" he says, laughing.

"Stop. You think it's funny? I'll tell you all about it. I think it's all cleared up." She exhales a groan, as if to say, thank God—there's all sorts of things I'm not telling.

Scrunching the phone between neck and shoulder, he keeps packing his suitcase, silent.

"Don't believe me. Oh, baby . . . it'll be so nice, the two of us. And you've got a week before classes."

SHE WEARS tight jeans, she wears high-heeled boots and a cowgirl shirt. It makes Jacob wonder who the guy is: her new stylist. In the back of the little red Supra she has a suitcase of clothes; up front, her purse and a backpack with vitamins, her CD's and tapes—a high-end stereo system was one of the goodies she'd put on his MasterCard. While he drives, she leans back, boots crossed on the dash, and sings along with Willie Nelson. Some guy, for sure, Jacob thinks. Does it bother him? Yes; but he actually likes her in this just-folks mode.

He drives east through the hills, up into the mountain pass on 15, snow mounded dirty along the roadside but shining white higher, on the peaks, then down onto desert flats with overlapping lines of mesa in the distance. Dead land, brutal. Into the crotch at Clark Mountain and down again, then flat, bare country along the line of the Mojave into Nevada, the rock hills closing in on the little red car, then opening to let it pass. You're wearing no makeup, not even eye makeup. I like the look. The last thing he wants is to make her self-conscious. He wants her to find a place in herself where she's comfortable. She's blathering now about her mother. About Nina, her mother's lover, who's never trusted her. "I mean the way you trust me, Jacob."

"Trust you? I *don't* trust you, honey. I just believe in how beautiful you could be. How beautiful you are under the lies."

She laughs. "You see? You're so damned honest with me. You keep me straight, Jacob."

"But I don't."

"Well, no one could. You come close."

"You run away."

"Don't get tiresome on me. I swear to God I won't ever run away from you again. You hear me, honey?"

"I thought you had a modeling job in Malibu."

She shrugs. On the long, terrible desert road to

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Vegas she pulls him to her by a clutch of his curly hair and kisses his cheek. "Jacob? I'm trying to be the person you see. You understand?" She closes her eyes. Something hovers over the road ahead; not a bird but a sheet of newspaper, whisked by a dust devil.

"Wait a minute." It dawns on him: "You said Nina? So your mother has a woman lover? What about that guy—the stepfather? *Is* there a stepfather, Marya?"

He can feel her churning, rehearsing something. She says, "My mother—she swings both ways. Anyway, stepfather isn't exactly the case."

"No?"

"Truth is, the guy I told you about, he was my mother's boyfriend. He's the one I was a courier for. His friends are the guys who were after me."

"And now they're not?"

"We made a deal."

"Marya, please." He waves away her story. "So you weren't abused?"

"Oh, I was, Jacob. I was. But not by him. He never came on to me. Actually . . . it was my *grandfather*, okay? My father's father." She looks for his reaction; he's not reacting. "You don't have to believe me," she says, sounding hurt, sitting up and reaching into her backpack for a cigarette. But Jacob holds his nose, shakes his head; she grunts a laugh, puts the cigarette back.

"Stepfather, grandfather—the point is you experienced abuse. I do believe that."

"Stop talking like a textbook. You know, mister, I hate that in you. 'Experienced abuse.'" She slumps down, pouting. He glances over at her, now this beautiful little child again, and feels grown-up, heavy. "I was *pawed*. The old son of a bitch put his fingers etcetera. . . . I had to do my own grandfather, okay? Then it got *worse*, got really bad, they sent me to a therapist. Don't believe me. You know, most kids who go through that, they're nauseated by sex, they get weirded out when a guy touches them. But that's not me. I get drunk on sex."

"Don't brag."

"You think I'm bragging? I'm like an addict. But with you—with you I feel almost whole, like it doesn't overwhelm me. Jacob? Do you love me?"

He takes a long, long time—a mile, two miles of desert, while they're both silent. Then she blurts out a laugh. "Just testing. Pulling your chain, baby."

"Yes, I suppose. I suppose I do love you. I mean, I'm in love with you. So what?" His face hot with anger. "So what?"

"Nah—nah—you just like the little things we do."

"Just shut up, stop that, will you, with the phony toughness."

"What are you doing here, anyway? Okay, okay." She spurts a laugh. "I know. You're here because I begged you, because you know the idea of driving all the way across this lousy country makes me want to kill myself."

"Too many things do that."

"I guess. So, you do love sick little me." She slips out of her boots and puts her feet in his lap and rubs her heels in figure eight's. Her head tilts to the side, her long hair spilling over her shoulders. She holds golden strands in her fingers—like *tzitzit*, he thinks. "I'm your little adventure into bad places. Aren't you lucky?"

"Stop—I'm driving." He pushes her feet away, and she laughs and lifts her foot up to his neck, tickles his neck with her toes.

"You won't marry me, Jacob?"

"I won't marry you."

"You see? Listen, I'd convert. Anyway, I told you, my mother is a Jew."

"Even if you were a Jew, how could I marry you? Maybe I'm in love with you—"

"Sure, sure."

"But marriage? I think about children. I think about bringing up children decently. The way I was brought up. Frankly, honey, I'd have to be crazy."

"Crazy, see, that's the only kind of love. *L'amour fou*, right? The way you were brought up? You were brought up to be a wuss, Jacob. See? *I'd* have to be crazy to love *you*. Hey, suppose I cut off all my hair and wore a wig and became a good Jewish wife?"

"Oh, baby. It would just be another costume."

"Well, thanks, mister. Jesus, I asked for honest, I get honest. You really think I want to marry you? You boring creep." She opens her window, stretches to open the back windows. Desert wind blows through. It's a statement. He lets it blow.

"What *do* you want from me?" Jacob asks. He feels so sad this minute for her—for the boots, the sexual pizzazz, the image of her wildness that keeps her going, keeps her, maybe, from breaking apart and keeps her from putting herself together. *Teshuvah*, a turning. Looking over at her, he's overcome by tenderness.

When did he start to love her? Until today, he's never told her, but he's known it for weeks. What a joke—that he flew to LA to rescue her. The truth is, he couldn't stand her not being with him. Face it. At times, he hates her. But when he's alone, he can't stop remembering her eyes.

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The night she called him, babbling and weeping—she'd tried to kill herself and got scared, needed him to get her to the emergency room. By the time he ran the seven blocks to her place, she'd already thrown up the pills. She cried as he held her all that night; she made him believe in her longing for a real life.

Las Vegas fifty miles. Forty miles.

"Look, Jacob. Cattle? Is that a herd of cattle?"

As they get closer, he can see: "No. It's ATV's or motorcycles. A posse of thrill riders."

They're driving through desert and desert and desert now, and under the flat blue sky the monochrome plainness says to him, *This is it, this is all there is, everything else we invent.* "Marya? Have you ever been to Las Vegas?"

"Omigod yes," she said. "And Jacob, don't let me gamble."

"Let's drive on through. Okay?"

"Or maybe gamble just a little?"

Their left rear tire starts to thump. Tup-tup-tup-tup-tup. The car floats a bit but there's no danger. He lets a couple of trucks shake by and pulls over onto a broad, flat gravel breakdown lane. Something about this he doesn't mind—what the hell, it gets them out of the car, into desert, and he can do what he's good at: handle things, real things, tires.

"I've got my cell," she says, digging through her purse.

"It's nothing," Jacob says. "It's easy. I'll bet we've got one of those little emergency spares; it'll take us to a station." He pops the rear hatch and moves her suitcase so he can lift the cover over the spare tire.

"Jacob?"

"It's here. They couldn't sell it to you without a donut."

"Hey, but listen, Jacob?"

He's unbolting the small tire. The desert wind blows hard.

"*Jacob!*"

Her eyes look a little crazy. He stops, wipes his hands on his jeans.

"What?"

"Look, Jacob. This is so stupid, but—that's not a working spare. Please—let me use my cell."

"It's fine." He taps the tire. "It's a little soft, but it'll do."

"No it won't, Jacob. Believe me."

Now he stops and really listens. He's already grim. "Why not?"

"Because the tire's a fake. I mean, it's got a plastic frame to make it look real."

"Why? Why would anybody do that?"

"Oh, figure it out, goddamnit!"

He bends down, shakes the tire a little, finishes unbolting and lifts. At the bottom is a patch.

"Better leave it," she says.

"Oh." He steps back as if there were a bomb in the trunk.

"Here's the thing. It's no big deal. I promised some guys I'd drive it east for them."

"Or *I'd* drive it east."

"I swear to God, Jacob, I really sold them the car, they're taking the whole thing—the car, the stuff, and I'm out of it. I leave them the keys and take an envelope from some doorman on 68th Street and walk away. Then I can pay you back. See, they're afraid of flying the stuff east. This is easy. Who's gonna look?—and if some asshole does take a look, there's a spare. It fooled you, right?"

"It fooled me."

"You think I needed you so you could drive? I told you why I wanted you here. Honey? Jacob? Friend?"

She puts out her hand, he pushes it away. "Use your cell," he says. He re-bolts the tire, sits in the passenger seat, tilts back, closes his eyes.

SHE DROPS him at the airport outside Vegas. They don't even say goodbye. He flies to Boston, spends a couple of days in the house he grew up in, the room he grew up in, now a guest room but with his tournament Frisbees still in a row on the wall and in the closet his old computer, his expensive baseball glove still good enough to save for his children, thousands of baseball cards, strata of childhood going back to a couple of stuffed animals and his first yarmulke and his kid drawings. Framed, covered by glass, a painting of a Torah scroll done as part of preparing for his bar mitzvah. He takes off his shirt, lies on his old bed with the carved wooden headboard, looking up at the ceiling, hands cradling his head.

His parents don't ask questions. His mother looks in, brings a piece of carrot cake, tea. He goes with his father to shul the next morning; afterward they stop at a deli for bagels. Jacob breathes in the smells of his childhood, breads and sliced meats, pickles. His father, balding, overweight, has taken to breathing heavily, and Jacob worries about his heart, although the rhythmic sighing somehow comforts him. Max Gershom riffles out onto the Formica a sheaf of papers. "I've been doing some checking on this friend of yours. You want to hear?"

Jacob shrugs. Sure. His father is an executive headhunter who works out of his home. So he

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knows how to search. He likes to say, "I'm a kind of detective, except the people I turn up are happy to be found." Now he clears his throat. "You're well rid of her. First of all, no Marya Gilbert graduated from Hunter High in New York City. Period. Also, I find no Marya Gilbert listed anywhere as a model or an actress. Of course," he says, holding up his palms, "maybe I'm not looking in the right places. If Ralph Lauren came to me as a client, it would be to find him a marketing director, not a model."

"So what did you find?"

The waitress puts down bagels and coffee. Jacob's father shoves the papers to one side and loads his bagel with cream cheese.

"That's the point—I found nothing. I found an e-mail address and a phone number. You tell me she lied to you? You bet she lied. You want to hear what she told the car salesman?"

"You talked to the car salesman?"

"Yes. In Queens. I'm like a bulldog—you know me, Jacob. From what you said about the Supra? Easy. So you want to know what she told him? He remembered her really well on account of her beauty—those were his exact words. She told him you were undergoing chemotherapy, you had maybe six months to live, and she was buying the car to take you to Maine, to your family home."

Jacob laughs so loud all the customers turn to look. "What a bullshit artist."

"The guy was really concerned about you." His father leans forward, the smile disappears. "Jacob—you're not sick, are you?"

"Dad! Of course not. You've got to understand how needy she is."

"You're well rid of that one," his father says again. He reaches a hand over the table and rubs Jacob's cheek.

Jacob takes the fast train to New York. He's just pulling out of New Haven when the first call comes in on his cell phone. He picks up but stays silent. "Jacob? Please, Jacob? Jacob, you bastard! *Jacob?*"

He imagines her driving through Nebraska and Iowa and Kansas with no one to lie to, no one to give her back a self. She's sitting in her fancy little car in the middle of desert, of prairie; she pulls over to the side of the interstate, the big trucks whipping by and shaking the Supra. She sits in the pretty red car by herself, weeping. Now she drives again, seventy, eighty, more, music blasting. Waking up in some chintzy motel and not knowing where she'd got to the night before. She must be terrified. She's knocked out, she pops pills, uppers to keep her going through the long day, playing her stack of CD's loud to let the music carry her. She's crying without an audience. Once in a while she stops for coffee and takes off her sunglasses, sees the men seeing her, her beauty reflected in their look. She smiles, puts the sunglasses back on, heads outside.

He works all afternoon, all evening, in the apartment he shares off Bleecker. Second semester in law school begins next week. He feels enormous relief, the virtue in anger, cleaning her out of his system. He feels he's gotten away with something. But groggy with fatigue, almost asleep, the room dark except for the city lights reflecting off his ceiling, he sees her driving through the dark of the Midwest, needing him.

All day she's called; he's turned off the phone. Next day there are long messages on voice mail; he erases them without listening. Then she stops. Now, in her absence, he remembers her sadness more than her falseness. Remembers the times her eyes grew wide as if to show him that her defenses had dropped away. *This is who I am.*

When he gets home, he calls Carol. "Is it okay if I drop over before Marya gets back, pick up my things? I left a sweater."

Remembering the night he ran through these streets to save her, he walks self-consciously past bars and stores to Christopher Street. It's getting on toward dusk, but the sun has escaped the clouds in Jersey and as it drops it sends a rosy haze through lower Manhattan. He looks south, where two giant towers are not there to catch the sunset.

Carol lets him in, lets him look around, gives him a plastic bag for books and the sweater Marya borrowed, the shirts he'd left. She's a lean, plain-looking young woman with a nice smile; Jacob feels comfortable in her presence. He can sit on her kitchen counter, legs dangling, drinking tea. Her dark hair is cut very short; she's in jeans and a heavy sweatshirt with the name of a gym. That's where she'd met Marya—they kept the same workout schedule. He talks with her about her job in her father's construction company, learning to estimate bids. They talk about law school. As he's leaving, his clothes in a shopping bag, he stops; this is the real reason he came over. "Carol? You said once you could tell me about Marya."

"Right. Well. You could probably tell *me* things. You must know everything by now."

"Her lying?"

"I've had it up to here with her lying," Carol says. "Not to mention, she hasn't paid any rent in three

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months. Anyway, when she's back, she's moving out. She'll be staying with that weird friend of hers, Ian. You know—the motorcycle in the living room?"

"I remember."

"I'm advertising for a new roommate. Sane, this time. But that's not what I meant. I meant . . . the modeling. You do know, don't you?"

"Not really." He remembers her regret at his regret that she couldn't do more with her life. When she'd come back from some Caribbean resort, after doing a commercial for a line of clothing, she was in particular grief. *If it weren't for you, Jacob. . . .* "She doesn't much like doing it, I know that."

"Doesn't like modeling? . . . Well, she's hardly *done* any modeling. You understand?"

"No."

"No? Well, I guess you could call it private modeling. You didn't know? For rich men. Not a lot of them. Two that I know of. She'd go away for a weekend. You see?"

He says he'd rather not talk about it.

But on the way home the new knowledge sinks down into him like a virus into a computer, altering memory, freezing the programs. Fragments come up to consciousness. Messages left on his answering machine. Her weeping over the phone after she got back from Aruba. He notices his jaw is clenched; he must be angry.

A couple of nights before the start of class there's another call. Her voice is cool and a little sloppy from drink, or drugs.

"Jacob, pick up? Jacob, if you get this, well, listen. I'm back. Jacob? I got rid of the Supra. I've got the money for you. . . . Well, look—here's why I'm calling. Remember you said to me a couple of times, you said if I needed to get to the hospital, I mean if I went *ahead* with it, okay?—and then I changed my mind and called you?—you'd get me there. Like the night you ran over to my apartment when I took the pills? The joke is, I didn't really take the pills that night, I just needed you. But now you need to get me to the hospital, baby. I really did it this time, and Ian's not home—you remember the guy with the Harley?—and I'm scared. Jacob? If you don't get this . . . no loss. Really. Certain people will be relieved. Including me. If you don't call back, I won't bother you again." And she recites Ian's address, Ian's phone number.

He's silent. He's thinking of calling 911—let them take her to a city hospital and pump her stomach. But it's just one more phony story. He's silent.

"I got rid of the car and the funny tire. . . . Come on, I know you're there, you bastard! Okay. Maybe you don't think I'm so beautiful down deep anymore? Well—maybe you're right. So . . . maybe goodbye. Jacob? Are you there, Jacob? Pick *up*, Jacob."

"SHE TOOK pills," he tells his father over the phone. "Her friend Ian found her this morning. And she'd shot up with something. That's what Ian told Carol, and Carol called me. She died on the floor, trying to get to the bathroom, maybe, or get help. I don't know."

"What a terrible thing to do to you. I've got no sympathy. She left you with that? Jacob, let her rot in hell!"

"Dad?"

"I've got no sympathy, Jacob. That's unforgivable."

"Dad? Let me explain something—I was *home* last night."

"You were home. So. You heard the message? When?"

"When she called, I was right there."

Now his father is silent. Jacob can hear him breathing heavily. It's no comfort. "And you didn't pick up?"

"No. I was sure it was another con. More manipulation."

"So you didn't pick up?"

"I would have called 911. But she was such a liar. Those weekends she was modeling. . . ."

"So you didn't come to the phone, you didn't call back? Oh, Jacob. How awful for you. How you must feel. Listen. Probably, even if you got to her or called, she must have been so full of bad drugs." Silence again. "Oh, Jacob, Jacob."

"Dad? Listen. Suppose it was to get back at her."

"That's not you, Jacob."

"Or suppose I couldn't stand it, being without her, so I wanted her to do it. So I wouldn't be tempted."

"Why do this to yourself?"

"Or worse. Dad? This is what scares me the most. Maybe it's something in me? Something I wanted to get rid of?"

"You think I don't get what you're saying? But the long and the short of it is you didn't know. Period. Jacob, you didn't know. So. I'm coming down to see you tomorrow. Okay?"

IT'S A month later—a gray winter morning, early morning, in Brooklyn. Jacob has withdrawn from classes for the semester. For almost no rent—he helps out a little, painting, running errands—he lives with the Presslers, a family of Orthodox Jews in Flatbush, and studies with a hasidic rebbe he knows.

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As he walks along the street, he talks to himself. Always, his lips are moving, in murmured prayer or conversation; it dulls and softens the world.

He's chanting morning blessings as he walks to Reb Pinhas's, past stores still closed-up, past well-dressed men hurrying to a minyan somewhere before taking the subway to work. Past the stores for Jews, the stores for non-Jews. From a trio of young black men walking to the subway he gets hard, contemptuous looks. This shocks him—as if they knew all about him and Marya. Then he remembers what he's wearing—black hat, black suit, the ritual fringes symbolizing the commandments tying him to the Torah and hanging down outside his pants; the beard. He hunts his reflection in the window of a kosher butcher shop. Even to myself I look foreign; must be the costume.

Reb Pinhas runs a little *shtibl*—a shul and a house of study—in a pair of adjoining brownstones; the walls have been broken open in places to make a single building. The lower floor, just below street level, has been converted into a room for prayer and study. The books and the dark paneling give the room a brown appearance; it's drafty, chilly, especially first thing in the morning. The room is too dim for study; in the cones of light from the desk lamps you can see a snowstorm of dust motes, you can smell hot dust. Old books line every wall, floor to ceiling. Two pairs of students in their late teens, early twenties, are talking in that yeshiva mix of Yiddish, English, Hebrew, and Aramaic. Always their hands are talking—fast, fast. At one of the study desks they're examining a text, chanting and talking, chanting, pointing, talking.

In the far corner, in the half-dark, Jacob davens alone, his fedora tilted back on his head, the prayer book resting on his chest as he stands and rocks. Everyone is in black and white. White shirts, black pants, shoes, jackets, yarmulkes, fedoras. Everyone is bearded. Jacob's beard has come in thick, curly, black.

Reb Pinhas comes down from his office upstairs to take part in the service. He's a balding man, not old but with the appearance of age, his bushy gray beard streaked with peculiar cords of pure black. He's fat, not overweight like Jacob's father but pasty-fat, his skin puffy, pale, every breath comes hard, and when he sits he has to draw himself down slowly into the leather library chair that looks as if it finished its best days 50 years ago. Someone has mended a crack with duct tape.

"I want to see you upstairs in my office," Reb Pinhas says to him after morning prayers.

A month ago, when he first told him the story, Reb Pinhas nodded, nodded, and, eyes closed, sighed.

"I hope you don't come to me so I can accuse you," the rabbi said, smiling. "No. Of course not. But I think I see why you stay away from your parents. You think, Reb Pinhas won't let me off the hook. It is said in *Berakhot*, in the place where penitents stand, not even the perfectly righteous can stand. So. We both know it's not a hopeless situation. You tell me you intend to say kaddish for this woman? I know you know, this is not customary."

"As if she were my sister."

"So we'll study the texts."

Study is what he's good at.

This morning, in the rabbi's room, it's study he first asks about. "So. How's it going?"

"Good."

"Good is good. But I notice things. I watch you. You're a little embarrassed by your study partner, isn't that right? And you're embarrassed that you're embarrassed?"

Jacob flushes. He is aware of his impatience. Shlomo, his study partner, can say only what the authorities have said about a text, sheep-like citations and over-reliance on the traditional principles of interpretation. When they study Psalms, Shlomo knows many by heart, but what can he say about them except "Oh, my . . . oh, my"? So Jacob, who has plenty to say, plays teacher. "We're learning together," Jacob tells Reb Pinhas.

"He is a very good soul."

Jacob, nodding, hears in his head Shlomo reciting in the Hebrew, "As for me, my feet were almost turned astray, very nearly were my steps washed aside." Isn't that enough? This isn't supposed to be Yale! He is a broken soul trying to break more, break all the way.

"I pray for God to help me turn."

"Of course."

"But, Rabbi?" His breath feels trapped in his chest. At last he says, "Sometimes when I pray, I look down and the whole room feels askew. I mean it's tilted—like an expressionist theater set. I'm afraid I'll fall."

Jacob doesn't expect the rabbi to understand "expressionist theater." But Reb Pinhas says, "You know, that's exactly the kind of thing I was afraid of. So tell me: You want to be one more *meshugene* in Flatbush?"

They laugh together.

"I'm serious." The rabbi raises a finger and wiggles it again like a metronome. "You think you can redeem yourself by showing God how much you suffer? Mr. Gershom: crazy is another costume. Like your nice black hat. You think God cares about a costume?"

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"No."

"That's right—no. I'm asking you, please, Jacob: do not concentrate on your own gestures. You understand me? And when you find yourself doing so, say, 'God! I am now in a place dangerous to my remembrance of You. Help me, that I not forget You.'"

Jacob nods, nods, gesture of submission.

"And then, Jacob, just . . . just live, study Torah with us. Say 'Good morning, Reb Pinhas.' Help out the family where you live. That's your *teshuvah*, your turning, you understand me?"

He nods. Even now, he feels like a liar. Because he nods and nods and doesn't say, Listen, Rabbi, I'm sitting studying gemara and she comes to me, and the whole of my side opens up to take her in. Every day, for an instant, he remembers touching her, that dangerous landscape.

Help me, that I not forget You.

He murmurs to himself, sitting in the basement with his eyes staring at a page of Talmud. Suppose Marya isn't dead at all. How does he know, except for Carol's call? I didn't see a body, did I? I didn't speak to the police. He's afraid to look up and out through the basement window, afraid he'll see a little red car. And wouldn't he just run to her, fringes flying.

Of course, if she were alive, the mark on his soul would be almost as dark. It was still a test—and he failed. But he begins to wonder. He considers calling Ian, but revulsion wells up too strong. One evening, in black coat, black hat, *tzitzit* dangling from under his belt, he takes the F train into Manhattan, drops in on Carol. She has a new roommate, a graduate student at NYU. "I'm glad you're here," Carol says. "A letter came for you a week ago. I didn't know where to reach you."

> Dear Sweetie,
>
> Here's the money I owe you. For reasons I won't go into, I had to disappear last month. But I didn't want you to worry or pray for me or something. When things settle, I want to be with you. You think we could be together? I can understand why you didn't come that night. I almost took the pills. I did. I filled the tub and lay there with the bottle of pills beside me but I just couldn't do it—maybe because you've taught me my life has possibilities. You think? Just so you know the truth. And I do love you, baby.

That's all. He passes the letter to Carol, and Carol starts cursing, until her roommate has to hold her, crying and cursing. Jacob closes his eyes, breath comes like rain, so deep. "Carol, it's okay. It's better."

"Better! Let her fall under a train, the bitch! And I've been feeling so bad about kicking her out!"

A money order is enclosed. Jacob considers tearing it up; but on the subway back to Brooklyn, he decides that it is, after all, his own money. He will treat it as a blessing from God. Back in the basement, when he looks up from his text, he sees legs walking by outside, cars passing, no little red Supra. Another blessing—the room, thank God, stops tilting. And now his lips don't move so often as he walks down the street.

WINTER IS almost done. It's a Sunday. This morning he is prepared to jack up the back porch of the Presslers' house. It's the kind of work he used to do every summer when he was in college. The porch leans badly, one outside corner more than a foot lower than the other. With the help of one of the kids, he's moved the contents of the porch onto pallets in the backyard and covered everything with polyethylene. Now, mid-afternoon, he rests on his bed. It's the first day he's been able to open the window of his room more than a crack; lying on the bed, he feels spring air wash across his chest. He closes his eyes. Is he remembering a motel in Venice, California? Not as far as he could tell you. But the breath of air makes him shiver; eyes closed, he feels Marya lying beside him on the bed, the length of her cleaving to him, flesh to flesh. Oh, just for a moment.

The air washing over him, he thinks of it as the air of freedom. Well, there's freedom and freedom. For instance, Passover is coming. On Passover we are to feel as if we, personally, are being liberated from Egypt. The root of *mitzrayim*, the Hebrew word for Egypt, means a narrow place. Hasn't he been trapped in a narrow place? And now, in spite of feelings he still can't control, isn't he freer? Lately, he's been able to talk to his mother and his father about his life here, to consider plans. He's planning to come to them for Passover.

But suppose that little red car of hers . . . ?

A soft tap at the door. It's Mrs. Pressler, calling in her soft voice, "Jacob? Jacob, there's a telephone call for you."

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What Remains of Robert Lowell?

Thomas L. Jeffers

Robert Lowell, who died in 1977, was a public poet in the vein of such 19th-century precursors as Ralph Waldo Emerson, Walt Whitman, and Henry Wadsworth Longfellow, or such 20th-century ones as Robert Frost and T. S. Eliot. All were "public" in the sense of being widely known and read, and in addressing, at least occasionally, the shared concerns of their audience. Of course, none of the 20th-century American poets was known or read by as large a percentage of the literate population as Longfellow had been, partly because, like Eliot, they felt they had to write "difficult" poems for a difficult age. Even the pastoral Frost, whose readers were more numerous than Eliot's, felt the torments of the time, and his poems could sometimes be correspondingly oblique.

Lowell's place is somewhere between Eliot and Frost, with regard both to the number of his readers and to the degree of his difficulty. But with regard to his public presence, he was very nearly their equal. His face was on the cover of *Time*, his political gestures made the front page of the *New York Times*, he hobnobbed with the Kennedys, was an informal adviser to Eugene McCarthy in the latter's 1968 bid for the presidency, and was a scion of families whose presence in America long predated those Irish clans. What Lowell cared about, most Americans of his day cared about.

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Lowell became a public poet with some reluctance. The great American modernists who came of age in the years before and after World War I—Eliot, William Carlos Williams, Ezra Pound, Wallace Stevens, Marianne Moore, Hart Crane, or the slightly older Frost—took a public-be-damned view of their work. Not that they went out of their way to condemn or ridicule their countrymen, but their sole responsibility was to their art. Love, war, God, history, the human condition: their subjects were traditional enough, but they challenged themselves to address them both in an up-to-date idiom and in more or less conspicuous dialogue with a seemingly out-of-date Hebraic-Hellenic tradition.

The job was taxing, mentally and physically, and the poets who came after these high modernists—Lowell, Randall Jarrell, John Berryman, Delmore Schwartz—were sooner or later defeated by it. The ultra-promising Schwartz drank, flickered out, and died at fifty-three; Berryman and Jarrell despaired and died of unnatural causes (the one committing suicide at fifty-eight, the other almost certainly doing so at fifty-one); and Lowell, his personal life a minefield, went through immense mental sufferings in and out of hospitals. If he was the best of this mid-century group of American poets, it is not because he lived a little longer (sixty years all told) and wrote more poems. It is because his poems are on the whole more verbally charged and formally more all-rounded—and because, compared with those of his co-rivals, they shed more light, more

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often, on topics central to the experience both of his own time and, like the works of any great writer, of times other than his.

That is why readers can rejoice at the publication this past summer, of Lowell's *Collected Poems*.* A quarter-century after his death, we finally have the poetry complete, from *Land of Unlikeness*, which had not been reprinted since the original 250 copies were privately published in 1944, to *Day by Day* and *Last Poems*, with a hundred more pages of uncollected poems, magazine versions, drafts in manuscript, translations of poems by the Russians Anna Akhmatova and Osip Mandelstam, and so forth. In their 156 pages of notes, the editors mostly suppress the impulse to interpret and stick to identifying sources, allusions, historical or biographical circumstances, and the names of persons and places that Lowell frequently and familiarly drops.

That it has taken so long to get all the poems between two covers is a story unto itself. Considerable time, naturally, was needed for the editors to do their work, but no doubt the delay also had to do with the mind-set of university literature departments and of publishers who follow rather than lead them. After his death, Lowell got stiffed by feminists who looked askance at what he wrote about being a husband, lover, and father, and finally what he stood for as a dead white male. Nor was he, for newly tenured radicals, radical enough. Even as early as 1970, when he taught at Essex in England, he found himself out of tune with students more interested in disarranging their brain cells through drugs than in thinking through aesthetic problems, and keener on Bob Dylan or even Rod McKuen than on Shakespeare or Stevens.

Academic and publishing predilections have evolved since then, mostly in ways unfruitful. All the more reason, then, to be grateful for this opportunity to go back and appreciate Lowell's work as a whole. After similar marble-block collections of the Beat poet Allen Ginsberg and, at the more meditative end of the spectrum, James Merrill, it is about time.

PUTTING TOGETHER a *Selected Poems* shortly before he died, Lowell, alluding to William Wordsworth's long verse-autobiography, *The Prelude* (1805), called his own work "a small-scale *Prelude*." What he meant was that, although "written in many different styles and with digressions," it nevertheless made up "a continuing story." Then he asked: "A story of what?"

It was a good question. "My journey is always stumbling on the unforeseen and even unforeseeable," Lowell replied, which was in part true; but it was not merely a story of one thing after another. For me, three stages are discernible. There was, first of all, the Boston Puritan who became a Catholic and whose *Lord Weary's Castle* won the Pulitzer Prize in 1946. Then there was the liberal romantic, whose *Life Studies* won the National Book Award in 1959. And last there was the egoistic but exhausted nihilist who is present in such unrhymed sonnet sequences as *The Dolphin*, which won the Pulitzer in 1973, and the open-form, exquisite *Day by Day*, which won the National Book Critics Circle Award in 1977.

The three stages were deeply personal—uniquely Lowell's—and yet they were also representative, thanks on the one hand to the poet's eloquence about his own condition and on the other hand to his capacity to remind us of how all lives broadly resemble one another. Remembering the opening of Tolstoy's *Anna Karenina*, however, one must affirm that each generation is unhappy in its own way.

Lowell's way of being unhappy was shaped by circumstances more notable than most. Through his father, a retired naval officer and ineffectual husband and businessman, he came from the Somerset Lowles who arrived in Massachusetts in 1639 and who in the 19th century produced the poet James Russell Lowell ("pedestaled for oblivion," as his descendant said) and in the 20th the Imagist poet Amy Lowell, whose brother A. Lawrence Lowell was "president of Harvard for millennia." On his mother's side, Lowell was allied to the Winslows, who had been on the *Mayflower* ("There were a *lot* of people on that boat," I once heard a Winslow say, looking around suspiciously) and made their mark as governors, Indian fighters, and merchants. Lowell's maternal grandfather, a Winslow who had struck silver in Colorado, was the alpha male in the wider family circle.

Grandfather, mother, father, aunts, uncles *et al.* are portrayed in the 30-page prose interlude, "91 Revere Street," that Lowell would include in *Life Studies*. It reads like such extraordinary New England autobiographies as those by the novelist Henry James, the historian Henry Adams, and the philosopher George Santayana: at once an account of an all-but-vanished plutocracy and an implicit diagnosis of the paternal absence and maternal overbearingness that contributed to whatever chemical anomalies led to Lowell's bipolar disorder.

This malady—manic breaks leading to hospitalization, electric shock, and finally lithium depen-

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dency—afflicted him all his life. Whatever his afflictions, the fact that his forebears were famous and that the class they belonged to had set the tone for two centuries of American culture as a whole made what happened to Lowell seem reflective of what they and their class had created, and constitutive of what many of his readers could regard as their experience as well.

Boy Lowell went to the prestigious St. Mark's school, where his sometimes boorish, bullying behavior earned him the nickname "Cal," as in Caligula the mad Roman emperor and Caliban the "savage" in Shakespeare's *The Tempest*. It seemed a matter of course that he would go to Harvard, and for a year he tried it, but no one on the faculty could help him become the poet he had decided he wanted to be. Once, when Frost visited the campus, Lowell showed him an epic he had been writing on the Crusades. The older poet "merely remarked," in the words of Lowell's best biographer Paul Mariani, "that the poem *did* seem to go on a bit."

Conciseness, in the manner of the 17th-century Metaphysical poets and of their 20th-century champion Eliot, was what Lowell learned when he left Harvard to sit at the feet of the Southern poets Allen Tate and John Crowe Ransom. The latter was his mentor at Kenyon College in Ohio, where he majored in classics and graduated valedictorian in 1940. That same year he married the soon-to-be novelist Jean Stafford, the two of them decamping to Baton Rouge where she typed in the humid office of the *Southern Review* and he studied English literature with Cleanth Brooks and Robert Penn Warren.

Altogether he had enjoyed a thorough New Critical, High Church education. He was taught to value a poem as a "well wrought urn," the sound of its meter and rhyme to be understood as a vehicle for its sense, and the poet's vocation to be founded on faith in the God Who had endowed words and things with meaning and Who redeemed the world—made it a sacred object of poetic attention—when He incarnated Himself in Jesus Christ. Lowell, who converted to Catholicism in March 1941, took this theology with the utmost seriousness, and would continue to do so even after he deconverted in the late 40's. He wanted to be a poet like the Jesuit Gerard Manly Hopkins, and to act like Jesus.

The former was just possible. The latter was not. Unable to show forbearance and kindness in his personal relations—twice he broke Stafford's nose, once by running their car into a wall and once by hitting her with his fist—he was nevertheless earnest enough in his faith to go to jail in wartime as a conscientious objector. He was by no means opposed to all wars, having several times, after Pearl Harbor, volunteered for service and been rejected on account of his myopia. But by 1943 he had become convinced that the Allies were waging war unjustly, both because of their demand for unconditional surrender from an Axis already on the ropes and because of their bombing campaign's decimation of civilians. He served five months of his year-and-a-day sentence in prison (he might have gotten three years), and then finished it as a janitor at an Army cadet nurses' dormitory. He may have been wrong in his moral calculus, but he had done his "just-war" homework and stood by his conclusions.

Meanwhile, there was his vocation. Throughout the war he was writing most of the poems that would be included in *Lord Weary's Castle*. The best of them are "Napoleon Crosses the Berezina" (Lowell could always address himself to grand figures and events with famous-family confidence), "1790," "At the Indian Killer's Grave," "Mr. Edwards and the Spider," and, supremely, "The Quaker Graveyard at Nantucket." This last is a composite of Hopkins's gnarled phrasing in "The Wreck of *The Deutschland*," Milton's "Lycidas," the first chapter of Thoreau's *Cape Cod*, and Melville's *Moby-Dick*:

> In the great ash-pit of Jehoshaphat
> The bones cry for the blood of the
> white whale,
> The fat flukes arch and whack about its
> ears,
> The death-lance churns into the
> sanctuary, tears
> The gun-blue swingle, heaving like a
> flail,
> And hacks the coiling life out: it
> works and drags
> And rips the sperm-whale's midriff into
> rags,
> Gobbets of blubber spill to wind and
> weather,
> Sailor, and gulls go round the stoven
> timbers
> Where the morning stars sing out
> together
> And thunder shakes the white surf and
> dismembers
> The red flag hammered in the mast-head.
> Hide
> Our steel, Jonas Messias, in Thy side.

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Lowell depicts the Quaker leviathan-chasers going to work with a grisly efficiency, while the butchered white whale becomes, like Jonah in Christian typology, a figure of Jesus the messiah. In his review of the book, which made Lowell's career, Jarrell noted this poem's "extraordinary rhetorical machine . . . which first traps and then wrings to pieces the helpless reader—who rather enjoys it," adding that the lines' "detailed factuality is particularly effective because it sets off, or is set off by, the elevation and rhetorical sweep characteristic of much earlier English poetry."

All true—though it is also true that *Lord Weary's Castle*, as Jarrell put it privately in a demurring letter to Lowell, was all in all "too little interested in people" and too much interested in "the actions of you, God, the sea, and cemeteries." But Lowell was soon enough to get people galore into his verse.

By the 1950's, following his divorce from Stafford and not coincidentally from the Catholic Church, and his marriage to the critic and novelist Elizabeth ("Lizzie") Hardwick, he was moving into what I have called his liberal romantic phase. Romantic means that his primary subject was now his own ego, a sensibility sublimely (or ridiculously) coping with the world of experience, without the aid of any natural or supernatural metaphysic. The God Who (people once believed) had sponsored such a metaphysic had absconded; what was left was humanity's ability still to conceive, if not a compelling metaphysic, then at least a plausible ethic of its own. Thus the liberal, in the 19th-century sense: Lowell wanted to liberate those who were in bondage. Translated into the politics of the 50's, his conviction was that it was imperative to grant blacks their civil rights and to find a way to prevent nuclear war.

In *Life Studies*, Lowell's sitters, as in a portrait painter's studio, were members of his extended family ("91 Revere Street," "My Last Afternoon with Uncle Devereux Winslow," "Commander Lowell," "Terminal Days at Beverly Farms," and so on); deceased precursors, mentors, or friends (Ford Madox Ford, Schwartz, Crane, Santayana); and, harrowingly, himself. "Beyond the Alps" is about his deconversion; "Waking in the Blue" and "Home After Three Months Away" are about his hospitalizations; "Memories of West Street and Lepke" contrasts the "tranquillized *Fifties*" on Marlborough Street in Boston with being jailed during the war as "a fire-breathing Catholic C.O."; and the much-anthologized "Skunk Hour" shows the poet confessing that "My mind's not right," "I myself am hell," in a culturally "ill" season in which the most vital life is a mother skunk and her "column of kittens" that have gotten into the garbage. "She jabs her wedge-head in a cup / of sour cream, drops her ostrich tail, and will not scare."

I say the poet was "confessing" this because everyone, including Lowell, said it. Reviewing *Life Studies*, M. L. Rosenthal thought Lowell's confessions too naked, a "rather shameful" spilling of confidences that "one is honor-bound not to reveal." After all, what business was it of ours that Lowell's father was a humiliating henpecked failure, and how could the poet "allow himself this kind of ghoulish," parricidal revelation "without doing his own spirit incalculable damage"?

This is the sort of question later readers would pose concerning Lowell's poems about his wives and children, *For Lizzie and Harriet* and *The Dolphin*, which violated the privacies of individuals yet living, quoting their letters without permission and generally displaying hampers-full of dirty linen. That is a problem I will return to. For the moment, I think one has to grant what Rosenthal finally granted: while the Lowells and their New England were not America *per se*, the "psychological breakdown" of Robert Lowell and the disintegration of his family's power were as emblematic of what might diffusely be amiss in the West as were the rough patches in the careers of his "sitters" Ford, Santayana, Schwartz, or Crane. Our culture was the sum of such "life studies."

Moreover, Lowell's exploitation of his own experience, mining the lives of relatives, lovers, friends, did not measurably exceed that of D. H. Lawrence in *Sons and Lovers* or *Women in Love*, or of Virginia Woolf in *Jacob's Room* or *To the Lighthouse*. What an artist "confesses" cannot help involving, however indirectly, his near and dear. Our job is to understand (a) what he or his subjects have done and (b) what he or his subjects have suffered—and to understand as well that insofar as (a) has been sinful, the blame lies in part with (b).

There, however, is the rub. Lowell famously cried "Pity the monsters!," even enormous ones like Caligula ("Tell me what I saw / to make me like you when we met at school?" he asked, with that nicely ambiguous "like") or, to the point of trivialization, Stalin ("What raised him / was an unusual lust to break the icon, / joke cruelly, seriously, and be himself"). If this was liberalism, it was liberalism gone gamy: *tout comprendre c'est tout pardonner.*

But liberalism had its combative tradition, too, and in *For the Union Dead*, the 1964 volume that followed *Life Studies*, the mood was often recrimi-

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natory, the Calvinist in "Cal" not too faint to damn. Here, for instance, is a passage from "The Mouth of the Hudson":

> Chemical air
> sweeps in from New Jersey,
> and smells of coffee.
>
> Across the river,
> ledges of suburban factories tan
> in the sulphur-yellow sun
> of the unforgivable landscape.

And this is from "Fall 1961":

> All autumn, the chafe and jar
> of nuclear war;
> we have talked our extinction to death.
> [. . .]
>
> A father's no shield
> for his child.
> We are like a lot of wild
> spiders crying together,
> but without tears.

That last sentence being a quotation from his daughter Harriet, who in it seems old before her time.

The Lowell of these passages can sound merely growly and self-pitying. But he was still enough of a liberal romantic to stay mindful of his ideals. "For the Union Dead," his greatest public-statement poem, is not without its sour swipes at the bombing of Hiroshima or other abuses of technology ("giant finned cars nos[ing] forward like fish," etc.). Mainly, however, the poem challenges an America faced with civil-rights protests in the South ("When I crouch to my television set, / the drained faces of Negro school-children rise like balloons") to emulate the heroic example of Colonel Robert Gould Shaw and the black troops, officered by whites, who fell in the unsuccessful attack on Fort Wagner in July 1863 and who are memorialized "on Saint-Gaudens' shaking Civil War relief" in Boston:

> at the dedication,
> William James could almost hear the
> bronze Negroes breathe.
>
> Their monument sticks like a fishbone
> in the city's throat.
> Its Colonel is as lean
> as a compass-needle.

One pauses here to note the absence of initial capitals and the rhymeless, irregular lines in the poems I have been quoting from *Life Studies* and *For the Union Dead*. This is the free verse that Lowell's generation associated with William Carlos Williams, notably in *Paterson* (1946-58), a five-part work devoted to the New Jersey community that Williams served as a physician and knew inside-out. Lowell recognized it was hopeless to imitate Williams's spare diction and chopped lines—those who had tried sounded bare and looked legless—but he could approach him indirectly by way of the conversational style of another poet, Elizabeth Bishop, whom he began to follow in the 50's.

The results were not consistently happy: Shaw and his regiment are not the only casualties in *For the Union Dead*. Lowell must have understood that, musically, the Williams-Bishop free-verse mode was minimalist at best. Hence, in *Near the Ocean* (1967), he brought back meter and rhyme, with especially spectacular success in the opening five-poem sequence beginning with "Waking Early Sunday Morning." Here he employs an eight-line, octosyllabic stanza modeled on the 17th-century example of Andrew Marvell, whose "Horatian Ode Upon Cromwell's Return from Ireland" is perhaps the greatest political poem in the language. In Lowell's hands, the form was adapted to a liberal social commentary that sometimes veered into the sentimentally panicked:

> No weekends for the gods now. Wars
> flicker, earth licks its open sores,
> fresh breakage, fresh promotions,
> chance
> assassinations, no advance.
> Only man thinning out his kind
> sounds through the Sabbath noon, the
> blind
> swipe of the pruner and his knife
> busy about the tree of life . . .
>
> Pity the planet, all joy gone
> from this sweet volcanic cone;
> peace to our children when they fall
> in small war on the heels of small
> war—until the end of time
> to police the earth, a ghost
> orbiting forever lost
> in our monotonous sublime.

Lowell later recalled that adhering to the stanza form was "a Godsent task that held me almost breathing couplets all one summer and deep into the next autumn. Shine compensated for the over-compression."

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The pressure of events, however, proved too strong for this degree of shine and, to some extent, for Lowell's own political equilibrium. By the late 60's he was writing the unrhymed sonnets that make up nearly a fourth of the complete poems: first under the title *Notebook* and ultimately organized under three titles, *History*, *For Lizzie and Harriet*, and *The Dolphin*. Between 1968 and 1973 he was often writing four sonnets a week, cutting his lines off at nine syllables, ten, eleven, or twelve. If the traditional fourteen lines were not enough for a subject, he would carry the discussion on into the next fourteen, or (rarely) the next after that.

He wanted to avoid the continuities of narrative, to create still lifes rather than a movie, and his subjects were the total of everything: his old-breaking and new-breaking marriages; his daughter Harriet and son Sheridan (a hell-on-wheels in his nonage); historical figures seen through the prism, and often given the speech, of the 20th century; his own moods, high and low; and, most interestingly and maddeningly, the political events of the day: Lyndon Johnson and the war in Vietnam, Gene McCarthy, Robert Kennedy, Martin Luther King, Jr., Richard Nixon, the lives and deaths of poets and novelists.

HERE, FROM *History*, is the first of his two sonnets about the antiwar March on the Pentagon in October 1967:

> Under the too white marmoreal Lincoln
> Memorial,
> the too tall marmoreal Washington
> Obelisk,
> gazing into the too long reflecting
> pool,
> the reddish trees, the withering autumn
> sky,
> the remorseless, amplified harangues
> for peace—
> lovely to lock arms, to march absurdly
> locked
> (unlocking to keep my wet glasses from
> slipping)
> to see the cigarette match quaking in
> my fingers,
> then to step off like green Union Army
> recruits
> for the first Bull Run, sped by
> photographers,
> the notables, the girls . . . fear,
> glory, chaos, rout . . .
> our green army staggered out on the
> miles-long green fields,
> met by the other army, the Martian, the
> ape, the hero,
> his new-fangled rifle, his green new
> steel helmet.

Besides putting his poem in dialogue with a poem by Melville about the first Bull Run roughly a century earlier, and thereby casting the Pentagon protesters as inexperienced good guys like Lincoln's Union troops, Lowell expertly registers the contraries of the moment—the monuments to America's statesmen reminding us of the reasons we have gone justly to war in the past but now seeming as triumphalist as the antiwar speeches seem simplistically pacifistic, mere "harangues"; the locking of arms with Norman Mailer, Dwight Macdonald, and Dr. Spock feeling both "lovely" and "absurd"; Lowell himself quaking, his colleagues moved as much by publicity and sex as by moral principle, and the National Guard soldiers appearing at once high-tech Martian with their gas-masks, stupidly apish, and heroic.

Speaking of heroic, here, again from *History*, are lines from the decidedly mock-heroic "The Restoration," about the return of President Grayson Kirk of Columbia University to his office after students had occupied it during the April 1968 campus uprising:

> The old king enters his study with the
> police;
> it's much like mine left in my hands a
> month:
> unopened letters, the thousand dead
> cigarettes,
> open books, yogurt cups in the unmade
> bed—
> the old king enters his study with the
> police,
> but all in all his study is much worse
> than mine;
> an edge of malice shows the thumb of
> man:
> frames smashed, their honorary honours
> lost,
> all his unopened letters have been
> answered.
> He halts at woman-things that can't be
> his,
> and says, "To think that human beings
> did this!"

At the time, Diana Trilling thought Lowell too soft on the student radicals—there was a running debate between him and her in the pages of COM-

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mentary from the fall of 1968 through the following spring—but one can see already Lowell's ambivalence about the methods of protesters whose aim (getting America out of Vietnam) he shared. From the late 30's on, his anti-Communist credentials had been unimpeachable, and when he saw a newspaper "photograph of students marching through Rome with banners showing a young Clark-Gable-style Stalin and a very fat old Mao," he knew that "the violence that has betrayed [his own generation's] desires will also betray theirs if they trust to it"—as many of the students disastrously did.

The political disasters of the era were compounded for Lowell by personal ones—manic episodes leading to McLean's (the tony psychiatric hospital outside Boston), the triumph of hope over experience as he left Hardwick for Caroline Blackwood, and affairs with star-coupling students semester after semester. When, following *For Lizzie and Harriet*, *The Dolphin* appeared, Adrienne Rich wrote a friendship-destroying review:

> There's a kind of aggrandized and merciless masculinity at work in these books. . . . [What can] one say about a poet who, having left his wife and daughter for another marriage, then titles a book with their names, and goes on to appropriate his ex-wife's letters written under the stress and pain of desertion, into a book of poems nominally addressed to the new wife? . . . I have to say that I think this is bullshit eloquence, a poor excuse for a cruel and shallow book, that it is presumptuous to balance injury done to others with injury done to myself.

For Anthony Lane, reviewing this new collection in the *New Yorker*, the bullshit has been washed away by time, leaving the eloquence pure. Not for me. The indelicacy Rich complains of might be excused if the aesthetic upshot were sufficiently brilliant, as in Lawrence and Woolf's cases, but that does not happen in the poems about Lowell's immediate, telescoped families. The phrasing of the appropriated letters, especially Blackwood's, is often bathetic, and Lowell's self-analysis frequently devolves into scab-picking. It is not his masculinism that spoils these poems. It is their own unendurable tedium and solipsism.

If here he failed to make his own domestic unhappiness reflective of other people's and so to achieve the kind of representativeness that *Life Studies* just managed to possess, he did succeed, in *Day by Day*'s poems about the deterioration of old age, in connecting with an audience once more. Though we all grow old and fall apart, and though anyone can scribble about it, what Lowell offered was descriptive specificity (which hardly ever failed him), startlingly apt metaphor, and heartbreaking understatement—the last-named quality being exactly what the on-and-on sonnets lacked. My own favorites from this 1977 volume include "The Withdrawal," about the selling of Blackwood's big house in England (she was heiress to the Guinness fortune), "Marriage," "To Frank Parker," "Seventh Year," "Home," "Shifting Colors," "Unwanted," "The Downlook," and the oft-lauded "Epilogue."

"Epilogue" in particular offers a key to Lowell's strengths and weaknesses in the final decade of his career. This was when, his liberalism failing and his romantic egoism narrowing to narcissism, he entered his nihilistic phase. Here is the poem in full:

> Those blessèd structures, plot and
> rhyme—
> why are they no help to me now
> I want to make
> something imagined, not recalled?
> I hear the noise of my own voice:
> *The painter's vision is not a lens,*
> *it trembles to caress the light.*
> But sometimes everything I write
> with the threadbare art of my eye
> seems a snapshot,
> lurid, rapid, garish, grouped,
> heightened from life,
> yet paralyzed by fact.
> All's misalliance.
> Yet why not say what happened?
> Pray for the grace of accuracy
> Vermeer gave to the sun's illumination
> stealing like the tide across a map
> to his girl solid with yearning.
> We are poor passing facts,
> warned by that to give
> each figure in the photograph
> his living name.

For him, then, there would be no more theological, historical, political, or even moral assertion, the sort of statement that plot and rhyme facilitate. Such statements come from painters, who must imagine the ways in which their brush translates what they see "out there" into what we will see on the canvas. A master like Vermeer had "*to caress the light*" in order to give us the sensation of "the sun's illumination / stealing like the tide across a map / to his girl solid with yearning." Lowell certainly wants his "say what happened" poems to

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have Vermeer's "grace of accuracy," or at least wants his snapshots to attain the art of the photograph, with the camera's lens sufficiently well-focused and the angle carefully-enough chosen "to give / each figure . . . / his living name." But he seems to know that painting is a more demanding art than photography, and the pleasures it gives correspondingly richer. That is why the summit of his own career, after all, was the painterly-titled, painterly-executed *Life Studies*.

LOWELL'S STEPPING back from the philosophical, political, and even narrative goals of his own early verse signaled both his loss of religious faith and his loss of the secular idealism that had underpinned the middle-period volumes. By the early 1970's he felt too depleted to pose any longer as a public spokesman for liberal causes, which in any case had petered out into the unedifying spectacles of anti-Americanism and the emergence of identity politics in place of the civil-rights movement embodied by Martin Luther King, Jr. (see "Two Walls"). The frank nihilism of Lowell's posture in the 70's is there in the mind freely associating, the ego alone giving a semblance of coherence to the jumble of "misalliance." Mostly, he proceeded to do what conscientious nihilists do: he observed, took notes, described what he saw, and—waiting for the end—sometimes, as in "The Nihilist as Hero," indulged himself in consolatory false theatrics:

> Life by definition breeds on change,
> each season we scrap new cars and wars
> and women.
> But sometimes when I am ill or
> delicate,
> the pinched flame of my match turns
> unchanging green,
> a cornstalk in green tails and seeded
> tassel. . . .
> A nihilist wants to live in the world
> as is,
> and yet gaze the everlasting hills to
> rubble.

Not wishing he were dead, but also not wishing that he were going to live long enough to land in a nursing home, he continued drinking and smoking his four packs of cigarettes a day, which amounted to a slow version of Berryman's leap from a bridge over the Mississippi. He died of heart failure in the back of a New York taxi on September 12, 1977. After an Episcopalian funeral service—that is how Lowells do it, he had said, appealing to "poetic" custom—he was buried in the Winslow family plot at Dunbarton, New Hampshire.

Thanks to this elephantine *Collected Poems*, his verse remains remain, a very large portion of them giving the aesthetic, if not always substantive, satisfactions one associates with greatness. His reputation herewith deserves to become secure as the premier poet of his generation and perhaps the last acknowledged public poet that America, now thoroughly prose-invested, will ever produce. Of his contemporaries, Jarrell was, at the end of the day, a droning poet if a most luminous critic; Berryman a plangent rhetorician but unable to control the manic comedy of his "dream songs"; and Schwartz, frankly, a postwar version of Thomas Chatterton, the 18th-century proto-romantic martyr, dying young because too good for a bad world. Not that Lowell's elevation is by default; it is by merit, as anyone who cares to read can now abundantly confirm.

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OBSERVATIONS

Cartooning, Left and Right

Michael J. Lewis

THE MOST appalling cartoon to leap from the ashes of September 11 was surely that of Ted Rall, who was brought to a high pitch of moral indignation by a particular class of malefactors. His cartoon—which enjoyed a brief stint on the *New York Times* website before being whisked away by mortified editors—jibed at one of the World Trade Center widows, depicting her as she chortled, "Fortunately, the $3.2 million I collected from the Red Cross keeps me warm at night."

Rall himself has been kept warm by the notoriety his cartoon earned him. Now he is to be found on the college lecture circuit, defending his work on the high ground of principle. As he declared in an interview with the student paper at Brown, "The best cartoons work by making fun of sacred cows, in trying to inflict the uncomfortable" (meaning, perhaps, "afflict the comfortable"). This of course is self-exculpatory boilerplate, but from it Rall draws an interesting corollary. Since, he claims, the point of cartooning is to challenge the status quo, there can be no such thing as a politically conservative cartoon: "I mean, what would a conservative cartoonist do? Make fun of poor people? Make fun of the handicapped?"

At least not of widows. But this gets to the heart of the matter. Rall is right that a political cartoon is by its nature an attack on the status quo, a diminutive but plucky rebellion against the order of things. But what is the order of things, and whose order? Especially these days, there would seem to be ample agents of the status quo to draw the amused ire of a conservative-minded cartoonist: teachers' unions, trial lawyers, the mainstream media, the corporate-shakedown industry. By Rall's theory, indeed, this ought to be a golden age of conservative cartooning. And so it is—though in limited and finally problematic ways.

A POLITICAL cartoon is a peculiar thing: out of the practice of politics, which is conducted essentially through words, it makes an image. In fact the words and the image are inextricably linked, since most (although not all) political cartoons also bear a caption, and the caption is often a cant political phrase of the day. It is the combination of the two elements, neither of which needs to be intrinsically funny, that must be comical if the cartoon is to succeed. Fatuous oratory and bombast are particularly good candidates for the cartoon's brand of parody, as with the first President Bush's pledge not to raise taxes ("Read My Lips") or Bill Clinton's "Bridge to the 21st Century."

It is not a high art. Ephemeral by nature, often slapdash in execution, the cartoon is incapable of complex argument or fine distinction. But it is superbly suited to presenting terse epigrammatic truths (or untruths). Like a monument, a great cartoon can render a complex idea in a single thrilling and grand summation. Unlike a monument, it is also able to illustrate processes and systems—cause and effect, unintended consequences, and the like—and to suggest the dynamic way that things work, lodging its ironic or caustic point in the mind of a read-

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er with potentially indelible effect.

To do this, one need not be a great artist. Benjamin Franklin, not otherwise celebrated as a draftsman, produced a simple sketch in 1754 of a snake severed into thirteen sections. The drawing was diagrammatic and conceptual, but its curt caption, "Join or Die," gave it an almost incendiary power. This was America's first political cartoon of note, and more than a century would pass before anything matched it. For the first half of the 19th century, American caricature remained a provincial outpost of the English world, cribbing from James Gillray, the jolly satirist of Napoleonic France. Political cartoons in this country were scurrilous and crudely drawn affairs, burdened with ponderous allegorical symbols and verbose captions.

All this changed with Thomas Nast (1840-1902), America's greatest political cartoonist. A congenial ruffian, Nast found a craft dominated by other ruffians and hacks and made it respectable. In a sense, the discipline of American editorial cartooning is his creation.

NAST'S FATHER was a picturesque figure, a revolutionary-minded trombonist in the Bavarian army who fled with his family to America when Thomas was still a child. The young artist absorbed his father's politics, and even spent a summer marching with Garibaldi in Italy before joining *Harper's Weekly* as a sketch artist. This was in 1862, at the start of the Civil War, just as the railroad and telegraph were making it possible for a nation to follow a war as it occurred, in what we would call real time.

Nast's boisterous and intricate style suited the printing technology of the day, when drawings could not yet be photographed and reproduced as halftones but had to be first translated into wood engravings before being printed. The most successful images were boldly linear, with lively contours and extensive use of hatching and crosshatching to create shades. This curiously impersonal technique played to Nast's strengths, including his great feel for physiognomy. Bringing certain characteristically German qualities to his art—precision of line, a delight in the rendering of physical objects, theatricality, and a robust sentimentality—he struck the right note for his time. In contrast to earlier cartoonists who could muster but a single tone (gleeful malice, for the most part), Nast's emotional range was vast—from furious outrage to mock pathos to elegiac grandeur.

Nast was also a fecund inventor of graphic symbols, or props, whose recurrence in his work gave it the momentum of a serial novel. Most are forgotten, but three remain essential tropes of American life: the modern image of Santa Claus (1863), the Democratic donkey (1870), and the Republican elephant (1874). But the central event of his career, and the inspiration of his best work, was the campaign against Tammany Hall in the person of Boss Tweed.

At bottom this was a shabby patronage swindle of merely local interest—the Tweed ring controlled the graft on all municipal contracts in New York—but Nast's cartoons turned it into an eagerly watched national drama. His accomplishment was to take the newspaper accounts of the scandal, with their dry recitations of police testimony and huge sums of money gone missing, and to personify them in grotesque but hilarious caricature. The principal figure in Nast's iconography was William Marcy ("Boss") Tweed, the commissioner of public works of New York City, arguably not the most important of the four ring members but by far the most mockable, with his portly figure and his deep, close-set eyes peering out at the world like a slightly dazed raccoon.

Tweed's physiognomy seemed to encapsulate the unquenchable appetite of the ring, and Nast quickly moved him to center stage. In his single most famous cartoon, he rendered Tweed's facial features with nothing more than a dollar sign on a money bag. By the time of Tweed's arrest in late 1871, Nast's comic crusade had tripled the circulation of *Harper's Weekly*.

NAST BEQUEATHED two very different legacies to subsequent cartoonists. On the one hand, he gave the cartoon its enduring association with progressive or, more broadly, anti-establishment politics. On the other hand, he made the cartoon respectable, freeing it from the stigma of its low origins and turning it into a full-fledged instrument of editorial policy. In other words, he brought the political cartoon into the establishment. And he brought the cartoonist as well, ending his own days as Theodore Roosevelt's envoy to Ecuador, where he immediately caught the malaria that killed him.

Most of Nast's successors, lesser talents all, have similarly tried to have it both ways: to play the defiant scourge of established authority even while enjoying its privileges and status. This was especially so in the case of the most successful cartoonist of the last century, Herbert L. Block, who signed his work *Herblock*. No one matched Herblock's longevity: born in 1909, he was first syndicated nationally in 1933, joining the *Washington Post* in 1946 and remaining at work until a few weeks before his death in 2001. And just as Nast's reputation was made with Tweed's fall, Herblock's was made by his dogged campaign against Joseph McCarthy, during the course of which he coined the term "McCarthyism."

Herblock's cartoons were the official art of the liberal establishment. His perennial targets were Republicans and the "money interests"; fittingly, for a man who began his career at the start of Franklin Roosevelt's first term, his mental universe remained that of the early

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New Deal. In the world of his cartoons, the government is forever the advocate of the little man, protecting him against the depredations of Wall Street. Even when he adopted new causes, including gun control (which he championed from the 1960's until his death), the overall attitude remained the same: there was no social problem that could not be remedied if government were not made just a little bigger.

From the aesthetic point of view, Herblock's success seems mystifying. He did not draw very well, and his caricatures were only approximations. Nor did they vary much in their spatial construction: generally two or three figures arranged around a desk or podium, or perhaps the portico of a public building. Metaphors were invariably perfunctory: a missile with a face on it was the Arms Race, a man with a gun and a bag of money was the Gun Lobby.

The latter problem, one might say, was generic. The Left's essential mental instrument is class analysis, according to which society is best understood in terms of the competing interests of aggregate groups: workers, peasants, capitalists, *rentiers*. These collective abstractions go with but also against the grain of cartooning; although it relishes stereotypes, it delights still more in the specific and the particular—the precise detail, the finely observed vignette. This is what makes the buffoonish Boss Tweed so much funnier than any stock "capitalist."*

Herblock's cartoons were not very funny; it is unlikely that any reader of the *Post* ever turned to him first upon opening the paper. Instead, his cartoons had the reassuring effect of an editorial laying down the conventional wisdom, restating that wisdom in a way that rarely provoked and never startled. They were polite, bland, and easily digestible.

HERBLOCK SUFFERED from another incapacity, which would lead decisively to his eclipse. As a member of the establishment, he was unable to exploit the great revolution within the establishment that marked the overthrow of President Richard Nixon. Here was a subject, Nixon himself, whose physiognomy seemed fully as predestined for parody as Boss Tweed's, and here were circumstances uncannily congenial to parody: bungled break-ins, telephone taps, secret tape recorders. But Herblock's status, combined with his formulaic approach and limited gift for caricature, prevented him from exploiting the great comic potential of the scandal.

The opportunity was seized instead by a visually more anarchic and for the most part younger group of cartoonists that included Paul Conrad, Pat Oliphant, and Jules Feiffer. It was not Herblock, the dean of the guild, but Paul Conrad, who served as chief cartoonist for the *Los Angeles Times* from 1964 to 1993, who won a coveted slot on Nixon's enemies list. In one brilliant offering, a play on Hamlet contemplating the skull of Yorick, Conrad depicted Nixon as the melancholy Dane, perched atop a vast pyramid of skulls and keening, "Alas, poor Spiro, and Dean, and Liddy," and so on, in a long, brooding litany set against a background of political carnage.

But the fall of Nixon was only one, albeit crucial, event in a period that saw many other changes in settled ideas of the status quo (to revert to Ted Rall's usage). By the 1970's, labor and capital, the power blocs of New Deal America, were no longer the chief players in American political life, and a cartoonist who continued to treat them as such—well into the 70's, Herblock was drawing the American plutocrat as a fop in a silk top hat, tails, and striped pants—was perpetuating an anachronism. As power in America began to be organized along entirely different lines, whole new fields of opportunity began to present themselves to cartoonists, especially to cartoonists who were not themselves prisoners of yesterday's form of anti-establishmentarianism.

Jeff MacNelly of the *Chicago Tribune* was one cartoonist who noticed that the cultural and even the financial clout once reserved to the banker, the general, and the clergyman was now being wielded by Supreme Court Justices, foundation presidents, educators, and journalists; as MacNelly himself would put it, "the liberal Democratic apparatus *was* the establishment." MacNelly hit his stride during the Carter administration (1976-1980), which he was the first to capture in visual terms. While others concentrated on goofy caricatures of Carter's gleaming dentition, MacNelly sought a more hidden prey, the essential psychological atmosphere of the administration. He hit upon the happy idea of showing the White House as a rural Appalachian landscape—an unmowed lawn littered with rusting and cannibalized pickup trucks. Here Carter's ineffectualness—the chaos in foreign and monetary policy, the opéra bouffe of Billygate and Bert Lance—was rendered visually in terms of dishevelment, an image all the more effective for its utter lack of viciousness.

MacNelly's distinctive hallmark was his scruffy line, which meandered in a loose and genial quaver. To this he brought an exuberant imagination that expressed itself in a torrent of outlandish visual puns. One of the finest was *Tobbacow:* a dairy cow is being milked with one hand by a corpulent Uncle Sam

* This problem dogged the cartoons of *The Masses* (1911-1917), the famous socialist periodical that published such important artists as John Sloan and Stuart Davis. In a typical example, a general contemplates a strapping, barrel-chested behemoth, complete except for his missing head, and exclaims in delight, "At last, the perfect soldier!" The point is that the modern imperialist state wants its soldiers to be mindless cannon fodder. But this is a visualization of a slogan rather than a visual thought: a poster rather than a cartoon.

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while a string leads from the other hand to a guillotine shimmering above the cow's head. "I wish he'd make up his mind," sighs the poor animal. At a time when virtually every American cartoonist was still representing the tobacco industry as a mighty pillar of the establishment, MacNelly took note of its essential and ever-increasing powerlessness.

At his best in opposition, MacNelly suffered somewhat during the Reagan years, when he turned his main efforts to his syndicated cartoon, *Shoe*, a comic strip whose low-key humor was reminiscent of Robert Benchley. Under Bill Clinton, he returned with a vengeance. While he could not seem to work up an intense visceral dislike of Clinton himself, he did for Janet Reno, Clinton's attorney general. Hounding her throughout her troubled reign at the Justice Department, he succeeded in making her look at once incompetent, comically rigid, and dangerous. In one of the saddest of his creations, the Cuban boy Elian Gonzales, forcibly returned home by our government, plays blissfully on a swing suspended from the barrel of an American tank. But this was to be MacNelly's last campaign; he died in 2000 at the age of fifty-two, leaving a gap that has yet to be filled.

IF THE shifting cultural and political climate of the last decades offered new opportunities for conservative cartoonists, developments of another sort were beginning to spell trouble for the entire enterprise. On the little stage of life that is the political cartoon, there is no room for explorations of character or nuanced discussions of motive. A cartoonist, political or otherwise, relies on a shorthand language of signs and symbols, the more conventional the better. Ours, however, is the age of political correctness, and the range of permissible symbols has been vastly constricted.

Not long ago, Pat Oliphant, the (liberal) cartoonist of the *Boston Globe*, made the mistake of depicting a Chinese figure running a laundry; for this he was sternly rebuked by his professional peers in the Asian American Journalists Association. His sin? The suggestion "that all Chinese ran laundries." By using a conventional device to identify a group—which is to say, by using the inherently symbolic language of cartooning—Oliphant was found guilty of artistic profiling.

This returns us to September 11. In an age that has banned from respectable discourse the very words "blind," "short," and "fat," what would have been more demeaning or hurtful, and therefore out of order, than to depict bearded, turbaned, Arab figures in a menacing posture? Even the beloved Doctor Seuss was being scolded, posthumously, on the republication of some of his "racist" World War II-era cartoons and found to be in violation of today's code of tolerance.

Of course the taboo against generalizations and group stereotypes is elastic. Ted Rall's rule—"The best cartoons work by making fun of sacred cows"—suggests that vicious stereotypes *are* permissible, so long as they are the right cows. The trick lies in knowing which those are. One obvious exception to the embargo on offensive stereotypes has been the Catholic priest or bishop—witness Pat Oliphant's "Celebration at St. Paedophilia: The Annual Running of the Altar Boys," which shows dozens of leering priests swarming out of church in pursuit of terrified boys who are fleeing as if before the bulls of Pamplona. Another has been the state of Israel, especially in the person of its prime minister, Ariel Sharon. Israel's new security fence was recently depicted by Tony Auth of the *Philadelphia Inquirer* as a barbed-wire concentration camp for Palestinians in the shape of the Star of David. (Auth cannot have been happy when an uncannily similar Nazi prototype of the cartoon turned up; it has since been widely circulated on the Internet.)

In the confused weeks after the attacks of September 11, many cartoonists struggled between their inhibitions and their need to express a wholly appropriate outrage. One way out was abstraction: numerous cartoons inveighed against such solemn generalities as hatred, terrorism, or vengeance, often presented as a smoking cloud of destruction or a snarling monster. Another was to concentrate on the domestic response. More than one cartoonist came up with the motif of an angry Uncle Sam rolling up his sleeves to fight.

These, however, were platitudes, formal expressions of pious sentiment, and they were hardly satisfying. In stark and frequently gaudy contrast stood, and stands, the work of another contemporary talent, Sean Delonas of the *New York Post*. Delonas's art is a bizarre cross between Jack Davis of *Mad Magazine* and Hieronymus Bosch. Rather than tiptoeing around visual stereotypes, Delonas revels in them: his lawyers are drooling ambulance chasers, his policemen grotesquely fat donut-chompers, his teachers sub-literate, his gay men invariably mincing on tiptoe with one knee bent. It is astonishing that he can get away with it, and in New York of all places, although it may be precisely the mantle of New York, where everything goes (or used to), that protects him—that, and the sheer manic energy of his stereotypes, which seem somehow to convey good will rather than malice.

Toward al Qaeda, in any event, malice was assuredly the order of the day. Delonas quickly realized that it was more effective to mock the terrorists than to curse them. As the first captured al-Qaeda prisoners were being brought to Guantanamo, he played wittily on the Islamic idea that 72 compliant virgins await each martyr in paradise. This subject was being treated pre-

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dictably enough by other cartoonists, with the usual punch line involving a confrontation between the eager martyr and some ghastly harpy in hell. Choosing a totally different tack, Delonas showed a bleak federal penitentiary into which is being led a column of bedraggled mullahs. From somewhere in one of the upper cellblocks, a muscular goon of a jailbird gesticulates excitedly: "Look, 72 virgins!"

This was quintessential Delonas: a vivid and well-drawn architectural setting, broadly caricatured stereotypes, and an invitation to the reader to imagine what is about to unfold. There was more morale-boosting power in this image than in dozens of pious smoke clouds labeled Hatred and Terror. Rather than making the enemy into a large solemn abstraction, Delonas reduced the enemy by making him specific. In all of this there was also a certain cruelty, a reminder of how much of the art of the schoolyard bully depends on a knack for mimicry.

Delonas is a big one for props, ever the cartoonist's friend. In the wake of September 11, a Pakistani supporter of al Qaeda had copied Osama bin Laden's image from a website in order to make political posters. Unnoticed by the Pakistani was another figure in the picture; the website was a satirical one, and impishly paired with bin Laden was the amiably dopey character Bert from the children's television series *Sesame Street*. As a result, the head of Bert the Muppet was soon being hoisted aloft on the streets of Karachi alongside the frowning visage of Osama bin Laden. For Delonas, this was gold: for months to come, he had Bert regularly at Osama's side, sharing a cooked shoe in a cave or teaching his henchmen the *Sesame Street* alphabet of terrorism.

The accumulation of props is firmly in the Nast tradition, which Delonas has clearly studied. He had made particularly good use of it in his many antagonistic cartoons about Bill Clinton, whose omnipresent alter ego was a pot-smoking chicken with love beads that eventually also acquired Monica Lewinsky's trademark beret. Delonas's most peculiar Clinton prop, an inscrutable fetish object, was a hand-cranked egg-beater with an open-mouthed fish mounted at the end: an icon for the polymorphous sexuality of the Clinton White House.

Delonas's gift for the vulgar is given ample room for play in his cartoons—another distinguishing characteristic of his art. When Michael Jackson married Lisa Marie Presley in 1994, Delonas depicted them on a sofa together, she in her wedding dress and he in his full fusiliers regalia. Holding his hand, she asks, urgently, "Michael, is there someone else?" In the thought balloon over his head is a freckle-faced urchin on a tricycle. A bold stroke, verging on the obscene; and yet Delonas's vulgarity is more nearly joyful or Falstaffian than vicious, not so much a deficiency of manners as an excess of vitality.

Delonas is not the only cartoonist to take up a politically conservative attitude. Michael Ramirez of the *Los Angeles Times* and Mike Luckovich of the *Atlanta Journal Constitution*, two professed admirers of MacNelly, have done so as well, and with considerable success. But they, and a scattered cadre of others in regional papers, are the sum total of conservative cartooning today. And in many ways their future is as clouded as that of their liberal colleagues.

I HAVE already named the hobbling factor: the overarching judgmentalism of today's regime of political correctness. There is reason to fear that the modern American sensibility has become so touchy and literal-minded that it can no longer accept the free-wheeling metaphorical language on which a cartoon culture thrives. If so, the political cartoon, that rambunctious child of the 18th century, will not outlast the 21st.

This is not only a matter of squeamishness about visual stereotypes. In July, Michael Ramirez lampooned the political scandal of the moment: the uproar over President Bush's claim in his State of the Union Address that Saddam Hussein's Iraq had sought to purchase uranium from Nigeria. His cartoon paraphrased one of the most famous images of the Vietnam war, the 1968 photograph of General Nguyen Ngoc Loan in the act of shooting a Vietcong prisoner in the head. Ramirez's version shifted the action from Saigon to Iraq, making Bush the would-be victim with the gun to his head while the general coolly taking aim was simply labeled "politics."

Plain enough, one would think; but in the ensuing contretemps Ramirez was widely condemned for making terroristic threats against the President and was duly investigated by the Secret Service. The surprised cartoonist, a reliable supporter of the administration, was reduced to defending the fitness of his imagery: "President Bush is the target, metaphorically speaking, of a political assassination because of sixteen words that he uttered in the State of the Union."

As metaphors go, Ramirez's was hardly esoteric. But that may be the point: the misreading of his intent suggests how essential to the life of the cartoon is the capacity to appreciate metaphor. We often hear that ours is a visual age, and that many of our brightest young people, users of computers and consumers of videos rather than readers of books, have developed in compensation remarkable powers of visual acuity and swiftness of perception. Obviously, though, one may consume visual material without being visually literate; indeed, the highly schematic nature of television and video promotes a habit of reading images only in their non-

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figurative sense. When symbolism as straightforward as Ramirez's eludes the reader, the cartoon is in a sorry way indeed.

But that is only one and perhaps the lesser problem. If the ability to appreciate metaphor is in decline, the regime of political correctness frowns on metaphor altogether. (It is striking that today's cartoons of the political Left, from Pat Oliphant to Tom Tomorrow, tend to rely more and more on verbal didacticism rather than on visual puns.) In the combined crossfire of these two tendencies, it begins to seem doubtful that the political cartoon can survive, at least in a form more sophisticated than that of a propaganda poster. It is no consolation that the same concern may be raised for American political humor in general, and for much else besides.

MUSIC

Prokofiev's Return

Terry Teachout

IN 1936, Sergei Prokofiev (1891-1953) ended two decades of voluntary exile in the West and returned to the Soviet Union. He was the only one of the many Russian composers who emigrated after the Bolshevik Revolution to do so, and his decision provoked a worldwide controversy. Prokofiev, after all, did not go back under duress—his family had been living with him in the West. Why, then, would so famously independent-minded an artist choose to live in a totalitarian state? What made him do it?

Needless to say, pro-Soviet Western commentators hailed Prokofiev's return, which was widely seen as a propaganda coup for the Kremlin. But Igor Stravinsky, another Russian émigré, had nothing but contempt for his younger colleague's decision, which he believed to have been motivated solely by Soviet promises of financial support. He told Robert Craft that Prokofiev had made "a sacrifice to the bitch goddess. . . . He returned to Russia, and when finally he understood his situation there, it was too late."

For the rest of Prokofiev's life, and long after his death, his work would be viewed through the distorting lens of politics, with critics in Russia and the West wrangling angrily over the comparative merits of his pre- and post-1936 compositions. The fact that certain of these critics were motivated by political agendas of their own served merely to complicate the picture still further, as did the fact that Prokofiev turned out a number of politically noxious works after his return to the Soviet Union. What, for instance, was one to make of such efforts as the 1939 cantata *Hail to Stalin*? And did the fact that he had written a composition celebrating the life of one of the greatest mass murderers of modern times have any relevance to the remainder of his output?

To ask these questions, however, is to be reminded that, whatever issues may have occupied the critics, most Western music lovers have taken little note of Prokofiev's political beliefs, insofar as they were even aware of them. From the 30's onward, he has ranked high on the short list of modern classical composers whose work appeals to a mass audience. Major soloists like Jascha Heifetz and Vladimir Horowitz played his sonatas and concertos, while his orchestral works were programmed by famous conductors throughout Europe and America. Nor did these artists and their publics distinguish between his pre- and post-1936 music (though his explicitly propagandistic works have yet to find an audience outside Russia). Whether early or late, Prokofiev's music is now firmly ensconced in the international concert repertoire, and shows no signs of declining in popularity a half-century after his death.

This very popularity introduces another complication. Prokofiev is

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a supremely accessible composer, and, at least among some critics, the modernist bias against accessibility has no doubt affected judgments of his worth. And then there is also the matter of his personality. Significantly, far more attention has been paid in recent years to Dmitri Shostakovich, Prokofiev's younger contemporary, in part because his music contains a confessional element alien to the cooler-tempered Prokofiev. (Significantly, the publication in the West of *Testimony*, Shostakovich's 1979 memoir, triggered an avalanche of commentary that had as much to do with his personality and his political views as with his music.) Prokofiev's personality, by contrast, has always been something of a mystery, even though he was a competent prose writer who left behind a memoir, a good-sized body of correspondence, and various other relevant documents.

Amazingly, David Nice's newly published *Prokofiev: From Russia to the West, 1891-1935* is the first full-length English-language narrative biography to be entirely based on primary sources, including important materials unavailable prior to the demise of the Soviet regime.[1] Nice's book, the first of two projected volumes, ends on the eve of Prokofiev's return to the Soviet Union, leaving many important questions hanging. But it offers an admirably lucid account of his youth and early maturity, and lays the groundwork for what will surely be a similarly illuminating explanation of what led Prokofiev to submit to the will of Joseph Stalin.

At first glance, Prokofiev would seem the last person to have fallen for Stalin's blandishments, for he was raised a perfect bourgeois. His father, an agronomist, managed the Ukrainian estate of a wealthy friend, and young Sergei (whose two older sisters died before he was born) grew up in privileged circumstances without acquiring the stigma of upper-class affiliation.

Like most important composers, Prokofiev was a child prodigy; he began writing music before his sixth birthday. He also proved to be a natural-born pianist, ultimately developing into a virtuoso whose idiosyncratic style won him international fame.[2] (Francis Poulenc, an admirer, would later compare his straightforward playing to "the steady unwinding of a precision clockwork motor spring.") Though he received a traditional musical training at the St. Petersburg Conservatory, studying with such composers as Nikolai Rimsky-Korsakov and Reinhold Glière, Prokofiev displayed unmistakable modernist tendencies early on, and such was his ability to impose his will on his teachers that he was permitted to perform his own First Piano Concerto in D Flat, Op. 10 (1912), as a graduation piece.

From the outset of his career, Prokofiev was seen as an iconoclast, no doubt in part because of his high intelligence (he was a competition-class chess player) and detached personal manner (he was notoriously blunt, often well past the point of tactlessness). But his music, despite the alarming impression it made on provincial Russian audiences, was in fact an unusual amalgam of modern and romantic elements. Despite the aggressive ostinato rhythms and polytonal harmonies that gave a "modern" sound to his early scores, Prokofiev remained unswervingly committed to functional tonality as the cornerstone of his musical architecture. Above all, he was blessed with the gift of melody. In early works like the First Violin Concerto in D, Op. 19 (1917) and Third Piano Concerto in C, Op. 26 (1921), he habitually alternated toccata-like rhythmic figuration with soaringly lyrical melodies—as if to display the sharply contrasting sides of his musical personality.

In a sense, Prokofiev's music was modern on the surface and traditional underneath. His modernist tendencies became more pronounced, though, after he emigrated to the West and began to work with Serge Diaghilev's Ballets Russes, Europe's leading incubator of theatrical modernism. It was at the Ballets Russes that Prokofiev heard for the first time Stravinsky's *Le Sacre du printemps*, whose radical idiom he simplified and emulated in his own *Scythian Suite*, Op. 20 (1915). But he never turned his back on tonality, even in such dissonant scores as his Second Piano Concerto in G Minor, Op. 16 (1913, rev. 1923) and the opera *The Fiery Angel*, Op. 37 (1923). At the same time that he was experimenting with harmonic extremism, he was also pioneering the backward-looking variety of modernism that came to be known as "neoclassicism."

Prokofiev's own description of the "Classical" Symphony in D Major, Op. 25, an affectionate spoof of 18th-century musical idioms, sheds light on his evolving style:

> I thought that if Haydn were alive today he would compose just as he did before, but at the same time would include something new in his manner of composition. I wanted to compose such a symphony: a symphony in the classical style.

As Prokofiev grew older, his iconoclasm lessened, and he started to simplify his musical language, mov-

[1] Yale, 390 pp., $35.00. Nice's book was completed prior to the publication in 2002 of Prokofiev's diaries, originally written in shorthand and only recently decoded by his son Sviatoslav. The diaries, which Prokofiev kept between 1907 and 1933, have yet to be translated into English.

[2] Prokofiev's facility as a pianist may explain his lifelong attraction to "white-key" diatonic melodies, and it was also responsible for one of the few chinks in his technical armor. Though he trained himself to compose away from the piano and developed a colorful, immediately recognizable style of orchestration, the textures of his orchestral works are often too obviously conceived in pianistic terms (an experienced pianist can "feel" much of Prokofiev's orchestral music in his hands), and thus can sound ungainly when executed by a large instrumental ensemble.

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ing away from the acerbities of his Stravinsky-influenced scores. His music would never lose its piquant harmonic flavor or rhythmic forthrightness, but the lyricism that had always been central to his musical character now became increasingly predominant.

Soviet commentators would claim that this stylistic shift was the resolution of an alleged "creative crisis" that Prokofiev solved by returning to the Soviet Union. But as David Nice makes perfectly clear, it had already manifested itself prior to 1936. In fact, some of Prokofiev's most seemingly "Soviet" works, including the score for the film *Lieutenant Kijé*, Op. 60 (1934), the Second Violin Concerto in G Minor, Op. 63 (1935), and the ballet music for *Romeo and Juliet*, Op. 64 (1936), were actually written in the West.

Prokofiev himself explained his change of direction in an article published in the Soviet newspaper *Izvestia* in 1934, two years prior to his return. Even allowing for Soviet censorship (or Prokofiev's own self-censorship), it is perfectly consistent with what he had long been saying to Western reporters:

> [I]n the Soviet Union music is addressed to millions of people who formerly had little or no contact with music. It is this new mass audience that the modern Soviet composer must attempt to reach. . . . It is by no means easy to find the right idiom for such music. It should be primarily melodious, and the melody should be clear and simple without however becoming repetitive or trivial. . . . The same applies to the technique, the form—it too must be clear and simple, but not stereotyped. It is not the old simplicity that is needed, but a new kind of simplicity. And this can be achieved only after the composer has mastered the art of composing serious, significant music, thereby acquiring the technique of expressing himself in simple, yet original terms.

Prokofiev was by no means the only composer of the 30's grappling with the problem of writing "serious-light" music (to use his term) that would make sense to untutored audiences. Similar tendencies can be seen in the music of numerous composers of the period. Some of them, most notably Aaron Copland, may have been motivated in part by political considerations; many others, however, including Béla Bartók and Paul Hindemith, were not.[3] And that brings us to the question with which we began: given the fact that Western cultural priorities as a whole were rapidly moving away from the hermetic modernism of the 20's, why did Prokofiev feel the need to go back to Russia in order to follow his new stylistic path?

The known facts admit to multiple interpretations, though one of them—Stravinsky's claim that Prokofiev returned to Russia because he was finding it difficult to make a living in the West—does not hold up to scrutiny. What the politically naive Prokofiev appears to have seen in the Soviet Union was a state-supported cultural apparatus committed to the creation of a mass audience for classical music. What he did not fully grasp was the deep-seated philistinism of the Soviet apparatchiks who would supervise his musical activities after 1936. Like most artists, Prokofiev was an opportunist, and it never occurred to him that the bureaucrats who lured him back would some day turn on him with the envious frenzy of second-raters who have finally gotten power over their betters.

One suspects that the stage-struck Prokofiev also saw the Soviet Union as a place where he would be able to write operas—and, just as important, have them produced. He had already completed three, *The Gambler*, Op. 24 (1917, after Dostoevsky), *The Love for Three Oranges*, Op. 33 (1919), and *The Fiery Angel*, but none had held the stage in the West, and it seems at least probable that Prokofiev thought he would have a better chance of success in the state-subsidized theaters of Russia.[4]

WHATEVER HIS reasons, Prokofiev made the move, and for a brief time flourished under the new regime. He was even allowed to travel abroad, coming to the United States in 1938. But then his passport was confiscated, and he began to feel the crushing weight of Stalinist pressure to conform. Though he somehow managed to produce a surprisingly large amount of first-class music prior to his death in 1953 (he died the same day as Stalin), including the Seventh Piano Sonata, Op. 83 (1942), and the Fifth Symphony in B Flat, Op. 100 (1944), he was forced to spend far too much time working on the propagandistic potboilers a loyal Soviet artist was expected to churn out, and his last years were additionally blighted by political persecution and declining health.

With the collapse of the Soviet Union and the end of the cold war, attempts have been made to rehabilitate some of Prokofiev's explicitly political works, such as the opera *Semyon Kotko*, Op. 81 (1939), which was produced this year at the Lincoln Center Festival in New York. To date, though, they have been tepidly received, and it now seems unlikely that there will be any wholesale critical revaluation of Prokofiev's post-1936 output.

Instead, what is almost certainly bound to come is a searching reexamination of Prokofiev's life under Soviet rule. How did he conduct himself when the going got tough?

[3] For a discussion of the relationship between Popular Front Stalinism and Copland's stylistic evolution, see my essay "Fanfare for Aaron Copland" (COMMENTARY, January 1997).

[4] In fact, Prokofiev's operas failed because he had no feel for vocal writing or text-setting. Though he devoted a huge amount of time and energy to opera composition after returning to Russia, none of the four works he completed there, including his massive stage version of Tolstoy's *War and Peace*, Op. 91 (1943, revised 1952), has won the approval of Western audiences.

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Was he courageous or cowardly? Might the darker, frankly tragic tone of major works like the Fifth Symphony and the First Violin Sonata in F Minor, Op. 80 (1946), have reflected an increased measure of musical confessionalism, *à la* Shostakovich?

These questions will presumably be answered in the second volume of David Nice's biography. But whatever kind of man Prokofiev turns out to have been, we already know what kind of composer he was: a tonal modernist whose music grew purer and more directly expressive as he shook off the excesses of youth and found his stylistic center of gravity. In Nice's words:

> [N]o creative crisis loomed for Prokofiev before the heads-or-tails return of 1936. This is as evident in his writings of the time as it is in the music; he believed totally in what he created and was simply trying to find new means of clothing the essentially lyrical self-expression which remains a constant throughout his composing life.

Even as the collapse of Communism has made it easier for us to understand Prokofiev's life, so has the collapse of the postwar musical avant-garde removed any remaining obstacle to a full appreciation of his music. One need no longer apologize for enjoying such pieces as the First Violin Concerto or *Romeo and Juliet*, or pretend that they are anything other than modern masterpieces, great works of art that are "popular" in the best sense of that much-maligned word. That they were written by a man who succumbed to temptation—and paid the price for it—need not make us love them less.

Prokofiev on CD: A Select Discography

All of Prokofiev's major works have been recorded, most of them numerous times, by some of the best-known performers of the 20th century. Among them was Prokofiev himself, who played his own piano music with absolute authority (and a surprising amount of flexibility). Here are ten of my favorite Prokofiev CD's, including works written both before and after his return to the Soviet Union; they are arranged chronologically according to the date of recording:

1929: The Russian émigré conductor Serge Koussevitzky championed Prokofiev's music throughout his career and gave the Western premieres of several of his compositions with the Boston Symphony. He recorded the "Classical" Symphony in 1929 and 1947. The better-sounding remake, reissued by RCA a few years ago together with Koussevitzky's 1946 recording of the Fifth Symphony, is currently out of print, but the earlier recording is still available as part of an anthology of Koussevitzky's Prokofiev recordings. Both versions are delicious souvenirs of the Boston Symphony's Franco-Russian elegance (Pearl GEMM CD 9487).

1932-35: Prokofiev's complete commercial recordings as a solo pianist, including the Third Piano Concerto and excerpts from the *Visions fugitives*, Op. 22 (1917), have been reissued several times, most recently in a CD edition excellently transferred from the original 78's by Mark Obert-Thorn (Naxos Historical 8.110670).

1935: Joseph Szigeti, that most characterful of prewar violinists, never made a better recording than his performance of the First Violin Concerto, accompanied to perfection by Sir Thomas Beecham and the London Philharmonic. This classic performance is currently available as part of a superbly produced four-CD box set of 78-era recordings by Szigeti (Andante 2990, four CD's).

1949: The Third Piano Concerto was a signature piece of the great American pianist William Kapell, who recorded his spectacularly virtuosic interpretation with Antal Dorati and the newly organized Dallas Symphony. It is currently available as part of the Kapell volume in Philips's *Great Pianists of the 20th Century* series. Comparisons with Prokofiev's 1932 recording are revealing—and not always to Prokofiev's advantage (Philips 456 853-2PM2, two CD's).

1968: Herbert von Karajan's definitive performance with the Berlin Philharmonic of the Fifth Symphony in B Flat, Op. 100 (1944), is temporarily out of print in the U.S., but can be ordered online from England at www.amazon.co.uk (DGG 423 261-2GMW).

1969: Itzhak Perlman and Vladimir Ashkenazy joined forces early in their careers to make handsome recordings of Prokofiev's two violin sonatas, Opp. 80 (1946) and 94bis (1944). (The so-called "second" sonata is a transcription by the composer of a work originally written in 1943 for flute and piano.) These performances have been recoupled

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on CD with Perlman's 1966 recording of the Second Violin Concerto, accompanied by Erich Leinsdorf and the Boston Symphony (RCA Victor Gold Seal 09026-61454-2).

1971: Maurizio Pollini's headlong yet incisive recording of the Seventh Piano Sonata in B Flat, Op. 83 (1942), has been regarded as a touchstone of postwar virtuoso pianism ever since its release (DGG 419 202-2GH).

1978: Perhaps the best of the many recordings of the delightful suite from *Lieutenant Kijé* is this crisp performance by Claudio Abbado and the Chicago Symphony (in which the incomparable Adolph Herseth plays the trumpet solos). It is coupled on CD with a 1980 recording of the *Alexander Nevsky* cantata, Op. 78, performed by Abbado and the London Symphony Chorus and Orchestra (DGG 419 603-2GH).

1985: Prokofiev's Third Symphony in C Minor, Op. 44, and Fourth Symphony in C Major, Op. 47, both derive from earlier stage works (Op. 44 is based on *The Fiery Angel*, Op. 47 on *The Prodigal Son*, written in 1929 for Serge Diaghilev's Ballets Russes). These scores, which between them sum up the changes in Prokofiev's middle-period style, have been excellently recorded by Neeme Järvi and the Scottish National Orchestra (Chandos CHAN 8401).

1990: *Romeo and Juliet*, like *Lieutenant Kijé*, has been well served by any number of celebrity conductors, but Valery Gergiev and the Kirov Orchestra of the Mariinsky Theatre, St. Petersburg, are noteworthy for the sense of theatrical immediacy they bring to Prokofiev's best-loved stage work (Philips 289 464 726-2PM2, two CD's).

In addition, WEA/Atlantic/Nonesuch has released a videocassette of a PBS *Dance in America* telecast of the New York City Ballet performing *The Prodigal Son* in 1978, with choreography by George Balanchine and décor by Georges Rouault reproduced from the original Ballets Russes production of 1929. Mikhail Baryshnikov dances the title role.

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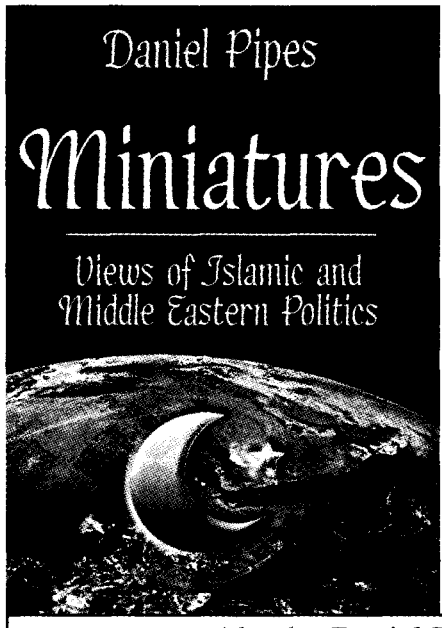

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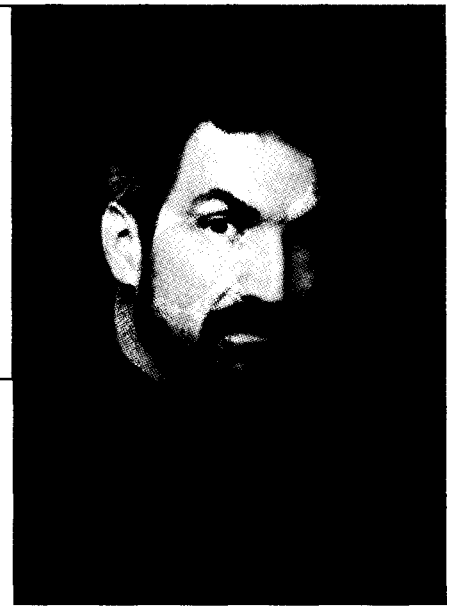

Daniel Pipes, director of the Middle East Forum, bestselling author, and prize-winning columnist for the *New York Post* and *Jerusalem Post* has been a former official in the Departments of State and Defense, and has taught at the University of Chicago, Harvard University, and the U.S. Naval War College. He has been nominated by President Bush to serve on the Board of Directors of the U.S. Institute of Peace.

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Books in Review

Freedom Fighter

Lost Prophet:
The Life and Times of
Bayard Rustin
by John D'Emilio
Free Press. 560 pp. $35.00

Reviewed by
Carl Gershman

PERHAPS THE archetypal democratic activist of the last century, Bayard Rustin is best known as the organizer of the 1963 March on Washington, the famous demonstration that was highlighted by Dr. Martin Luther King's "I have a dream" speech and that spurred passage of the most important civil-rights legislation in the nation's history. But Rustin's role in that event hardly exhausts his importance. More than any other figure, he occupied a central place in each of the three major streams of American social protest: pacifism, the ideological Left, and the movement for racial equality. To each he made a luminous, indispensable contribution.

What makes Rustin's career especially interesting, if also difficult to capture within conventional political categories, was not just his ability to connect these streams but the shifts and turns he took within them. He was an ardent pacifist who eventually turned against the pacifist movement, alienated by its moral absolutism, its fecklessness, and its isolation from the main currents of democratic activism. As a leftist, though he spent a brief period in the Communist youth movement, he evolved into a devoted opponent of Communism, becoming the leader of the most anti-Communist tendency within the American Left. And while he spent decades at the cutting edge of the racial-protest movement, often as its most radical tactician, he ended as the most unyielding adversary within the civil-rights movement of black militancy and separatism.

Since Rustin's death in 1987, he has attracted increasing attention for yet another dimension of his life—the fact that he was an open homosexual. Indeed, his homosexuality threatened to compromise his political activities and influence, especially after he became a national figure during the heyday of the civil-rights movement. His two-month imprisonment in 1953 on charges of lewd vagrancy nearly ruined his career; it was repeatedly held against him by his political foes, most notably in 1963 when Senator Strom Thurmond tried to exploit it to discredit the March on Washington.

These experiences have also, however, made Rustin something of a hero to today's gay-rights movement. In January, a major documentary film, *Brother Outsider*, was shown nationally on public television in observance of Martin Luther King Day; it has since made the circuit of gay and lesbian film festivals in the United States, Europe, and Canada. And now we have *Lost Prophet*, by John D'Emilio, a professor of "gender studies" at the University of Illinois at Chicago. Like the film, the book is problematic; but it affords an opportunity to revisit an inexhaustibly fascinating career.

CARL GERSHMAN *is president of the National Endowment for Democracy. He worked as an assistant to Bayard Rustin from 1969 to 1971.*

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RUSTIN WAS born in 1912 in West Chester, Pennsylvania, a Quaker town that had been an important stop for slaves fleeing to freedom on the Underground Railroad before the Civil War. He was raised there by his grandparents, his unwed teenage mother having left home before he started school. In high school he was a star athlete and a top student, but it was his beautiful tenor voice that earned him a musical scholarship to Wilberforce University in Ohio, the first college for blacks in the United States. In the late 1930's he moved to New York to pursue his growing interest in radical politics; there he managed to support himself by collaborating with the blues musician Josh White.

A natural movement builder, Rustin became an instant sensation in 1941 when he joined the staff of the Fellowship of Reconciliation (FOR), a Christian pacifist organization headed by A.J. Muste. "He could move people with his singing," D'Emilio writes, "impress them with his analytical powers, awe them with his courage, inspire with his vision." It did not hurt that he was also strikingly handsome: describing him in interviews with D'Emilio, his associates from those days use words like *electric*, *charismatic*, *prophetic*, *magnetic*.

As an organizer, Rustin had the rare ability to operate simultaneously in different arenas. Thus, while networking with the middle-class white congregants associated with FOR, he also helped A. Philip Randolph mobilize support among working-class blacks for a March on Washington Movement (a precursor of things to come) and recruited college students to the newly launched Congress on Racial Equality (CORE), which first injected the Gandhian concept of nonviolent resistance into the struggle for racial justice. When he entered the federal penitentiary during World War II as a conscientious objector, Rustin immediately started a campaign against segregation within the prison facilities, prompting the warden to describe him as "an extremely capable agitator" possessing "in abundance the rare quality of leadership."

By the time of the 1955 Montgomery, Alabama bus boycott, which ignited the modern civil-rights movement, Rustin was already a seasoned activist. To the nascent battle he brought his vast contacts, a philosophy of nonviolent struggle and the skills for conducting it effectively, and an ability to think strategically on a national scale. Arriving in Montgomery as an emissary of the Northern pacifist movement, he immediately formed a bond with King, who had emerged as the boycott's spokesman but who still lacked a battle plan and a larger vision. Rustin taught the boycotters to turn their indictments of segregation into proud symbols of resistance that would inspire others; in so doing, he "initiated the process," in D'Emilio's words, "that transformed King into the most illustrious American proponent of nonviolence in the 20th century."

The relationship with King allowed Rustin to remain in the background at a time when his own personal past, including his involvement in radical politics, could be used to damage the movement. But his low profile hardly impaired his effectiveness. He conceived and implemented a strategy for turning the Southern Christian Leadership Conference into a national movement against segregation; organized the Prayer Pilgrimage and the Youth March for Integrated Schools, which served as dress rehearsals for the subsequent March on Washington; and, together with his mentor Randolph, fashioned an alliance with the trade unions that supplied the civil-rights forces with resources and organization.

In late 1962, Randolph and Rustin conceived the March on Washington, designed both to commemorate the centennial of Lincoln's Emancipation Proclamation and to revive a similar idea from the war years that Randolph had abandoned when President Franklin D. Roosevelt acceded to his demand to integrate the defense plants. Now, in the wake of demonstrations in Birmingham, Alabama that led the Kennedy administration to introduce a comprehensive civil-rights bill, the idea of a mass mobilization in the capital loomed as a potentially historic opportunity. Rustin was the logical person to organize the March, although, inevitably, some civil-rights leaders resisted his appointment on the grounds of his past. Randolph resolved the dispute by saying that he would direct the March and name his own deputy, who would be Rustin. The rest is history.

D'EMILIO WRITES that he was drawn to Rustin because of his interest in the decade of the 1960's and his belief that Rustin's story might illuminate some of its most wrenching conflicts. He was particularly taken, he says, with Rustin's essay, "From Protest to Politics," which appeared in COMMENTARY (February 1965) in the wake of the March on Washington. Appearing at a critical moment in the history of the struggle, this seminal work attempted to steer the civil-rights movement away from demonstrations and toward a broad program of coalition politics and economic uplift for the country's poor.

D'Emilio remains troubled that Rustin's advice was scorned by militants. Indeed, he considers it one of the "cruelest ironies" that "conservatives on the Right rather than progressives on the Left took up elements of Rustin's ideas and ran with them." This, however, is not what happened at all. Conservatives did not adopt Rustin's political strategy or economic program; they just benefited politically from the backlash against the burgeoning race riots of the mid-to-late 60's and the breakup of the liberal coalition over the war in Vietnam.

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In any case, it was less Rustin's political ideas than his image as (in the words of the publisher's blurb) "a victim of homophobic prejudice" that really drew D'Emilio to write about him. Rustin has been "lost in the shadows of history," he writes, because "he was a gay man in an era when the stigma attached to this was unrelieved." But D'Emilio is wrong here, too. Apart from King and Malcolm X, few of the great figures from the civil-rights era are remembered today. Moreover, although it is true that Rustin stayed mostly behind the scenes in the wake of his arrest in 1953, he emerged as a national figure with the success of the March on Washington; if anything, Thurmond's attack on him back-fired, actually elevating his standing in the movement. Finally, if Rustin was pushed aside in the years following the March, it was more because of his opposition to Black Power and his alliance with the anti-Communist AFL-CIO than because of his homosexuality.

Whether or not Rustin suffered because of his homosexuality, he never talked about it or raised it as a political issue. (D'Emilio acknowledges that he "was notoriously tight-lipped about his personal life" and "preserved to the end his generation's habits of discretion.") Certainly, his sexual behavior caused him no end of problems, including with Muste, who eventually demanded that he leave the FOR. But it is a vast exaggeration to claim, as D'Emilio does, that he "found his aspirations blocked, his talents contained, and his influence marginalized." His very success as an activist belies this contention.

Where D'Emilio may be closer to the mark is in stating that Rustin suffered an "aching loneliness" that at times led him to seek out whatever companionship he could find, especially while on extended speaking tours. It is even possible that his pacifism was a way to master an inner rage growing out of his illegitimacy and abandonment by his mother, an observation made by a therapist who saw Rustin after his arrest in 1953. But who knows? What we can be sure of is that he abhorred thinking of himself as a victim. He enjoyed life too much, knew that psychological crutches could be more harmful than the injuries themselves, and regarded the idea of victimization as more threatening to black dignity than white racism, which could be overcome only by people with pride and self-confidence.

In general, though *Lost Prophet* presents an immense amount of personal detail, and offers no end of quotations from friends and associates to the effect that "there was a magic about Bayard" and that he

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"just lit up everything," it fails to capture his robust, irreverent personality. In this regard, it cannot compare with the documentary *Brother Outsider*, which presents Rustin in his own person and to the background music of his own rich voice. To watch, for example, as he lit up the faces of children at an Indochinese refugee camp in Thailand with a rendition of "Oh, Freedom" is to understand far more about him than D'Emilio conveys in thousands of inadequate words.

The real problem with *Lost Prophet*, however, is not its failure to capture Rustin's personality but its insistence on seeing him as what he was not: a thwarted victim, or a permanent rebel against an unjust system. Although D'Emilio is clearly drawn to the militant pacifism of the young Bayard Rustin, he has great difficulty understanding his subject's later political development, his growth and adaptation to changing circumstances. To his credit, he declines to side with those who accused Rustin of selling out in the aftermath of the March on Washington; but he cannot hide his own ambivalence, or his worry that as the political ground shifted in the 1960's, the claims made against Rustin "came to seem credible."

D'Emilio is especially baffled by Rustin's failure to take part in the movement against the war in Vietnam. This he attributes in part to Rustin's stubborn refusal to reconsider his strategy of building a majority coalition with labor and the Democrats (both of whom supported the war, the former for longer than the latter); in the end, he calls it a "mystery" he cannot fathom. His mystification is understandable. At the time, it was shared by Rustin's former allies in the radical Left, who never forgave his movement away from a pacifism that was equally opposed to both sides in the cold war to an ideological anti-Communism that was prepared to make moral and political distinctions between the democratic West, with all its flaws, and Soviet totalitarianism.

Given D'Emilio's inability to understand or appreciate the later Rustin, it is not surprising that he glosses over the last two decades of his life, when Rustin's focus shifted from social protest to international human rights. D'Emilio attributes the shift in focus to the decline of liberalism and the divisive tactics of the Nixon White House, which "cripple[d] progressive political mobilizations." In fact, the world had changed, and the cutting edge of the struggle to expand human freedom—which was always where Rustin wanted to be—had moved from the streets of Birmingham to the shipyards of Gdansk and other distant locales where people were either fleeing oppression or working to open closed systems.

D'Emilio does briefly mention the various global missions Rustin undertook with Freedom House and the International Rescue Committee. But he omits entirely his chairmanship of Social Democrats, USA—which was his ideological base—as well as his founding of Project South Africa, an initiative to promote the peaceful dismantling of apartheid to which Rustin devoted a good part of his last years before his death in 1987. Finally, noting Rustin's outspoken support for Israel and his formation of the Black Americans to Support Israel Committee (BASIC), D'Emilio cannot help reminding us that here, too, Rustin's stance "troubled many of his old associates in the peace movement."

So it did. But Rustin had moved far beyond his early pacifism and had become acutely sensitive to the evil of anti-Semitism, something he had not adequately appreciated when he resisted the war against Hitler as a conscientious objector. Altogether, he had the ability to learn from experience, and he never shrank from accepting his own vulnerabilities. In the course of his life he moved toward America; but, thanks to the changes he himself helped crucially to bring about in our society, America also moved toward him. Whether he was a prophet in his own time is a matter of judgment. But to say that he was lost could not be farther from the truth.

Who Decides?

Bearing Right:
How Conservatives
Won the Abortion War
by William Saletan
California. 327 pp. $29.95

Reviewed by
Kay S. Hymowitz

THREE DECADES ago, Norma McCorvey, a broke and aimless twenty-one-year-old facing her third unwanted pregnancy, took the alias Jane Roe and became the plaintiff in a case that led the Supreme Court to pronounce abortion a constitutional right. Now middle-aged and a born-again Catholic, McCorvey was back in the Texas courts this past June, and her subject was still abortion. This time, though, she was petitioning to *overturn Roe* v. *Wade*, the momentous 1973 decision made on her behalf.

McCorvey's about-face may be the strangest turn in the ongoing struggle over abortion, but it is by no means the only one. Contradictory positions, rhetorical oddities, and strange bedfellows have become commonplace over the past few decades, William Saletan argues, a result in large measure of the debate's shift from the courts to legislatures and the election stump. In *Bearing Right*, Saletan, the chief political correspondent of the online magazine *Slate*, provides a detailed chronicle of abortion politics from the mid-1980's to the present. His

KAY S. HYMOWITZ *is a contributing editor of the Manhattan Institute's* City Journal.

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thesis—that through these twists and turns we have reached finally a "conservative" equilibrium on the issue—is at once sharp, illuminating, and ultimately unsatisfying.

As Saletan notes at the outset, "no consensus had been built" for the "nationwide regime of abortion rights" imposed by *Roe*. By 1986, when his account begins, many states were seeking ways to limit the broad sweep of the decision, particularly by banning the use of state funds for abortion (the 1976 Hyde amendment had already prohibited the use of federal monies). Still worse from the point of view of pro-choice advocates, the Supreme Court, under the new appointees of Ronald Reagan, seemed inclined to grant the states more power to regulate the procedure. Supporters of abortion rights would have to start playing politics as never before.

Activists at the National Abortion Rights Action League (NARAL)—the focus of Saletan's early chapters—quickly realized that a large swath of American public opinion on the issue was still up for grabs. Polls suggested that 60 percent of voters defined themselves as neither pro-choice nor pro-life. With the help of hired political consultants, NARAL came to understand that to fight for abortion rights, especially in the Bible belt, it would have to give up its usual rhetoric about "sexual freedom" and "a woman's right to choose" and keep its distance from the National Organization for Women (NOW) and the American Civil Liberties Union (ACLU), groups that were about as welcome in the South as the Communist party. To seduce conservatives to its cause, NARAL would have to tap into their hatred of government meddling.

Several of Saletan's scenes illustrating this shift are heavy with irony. He describes NARAL executive director Kate Michelman, a veteran of the civil-rights march on Selma, as she watches members of an

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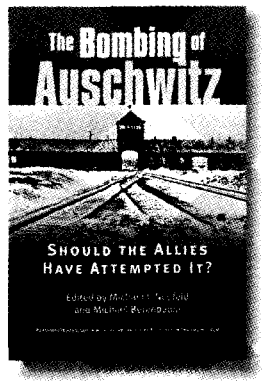

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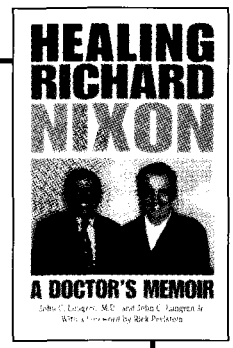

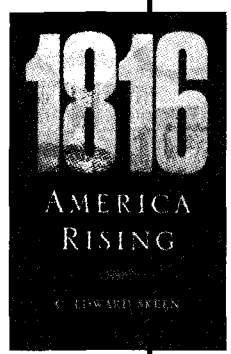

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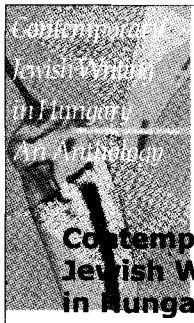

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Alabama focus group rail against the federal government in George Wallace mode. Soon enough, her own organization was adopting their language. While the more doctrinaire NOW continued to pass out signs saying "Keep your laws off my body!," NARAL was printing placards emblazoned with "Keep Big Government Out of Our Bedrooms" and "Who Decides? You or Them?" And the strategy worked, not only at the state level, in places like Arkansas, but also in the effort of pro-choice forces to sink the Supreme Court nomination of Robert Bork, whom they successfully cast as a pro-government, busybody extremist.

But these successes also had a price. One of NARAL's core demands had always been public funding for abortions for poor women; the group's new anti-government theme scuttled that position. Compromised, too, was NARAL's longstanding policy opposing parental-notice and -consent laws. Pro-choice activists began to see the virtue in candidates who, while vowing support for *Roe*, insisted that abortion decisions should "remain in the family." A turning point in this regard, according to Saletan, was the 1989 governor's race in Virginia, where Democrat Douglas Wilder managed to become America's first elected black governor in large part by emphasizing his support for a parental-notification bill, establishing himself as a moderate against an ardently pro-life Republican.

Nor was suspicion of government the only conservative theme that pro-choicers were willing to exploit. They also embraced law and order. Fending off anti-abortion forces in Louisiana, they reminded voters that some women were pregnant as a result of crimes beyond their control. "Don't you think poor women who are pregnant because of rape and incest have suffered enough?," asked one 1989 NARAL ad. When pro-life absolutists countered with claims about the "innocence of the unborn" and objected that women would lie about being raped, abortion advocates were able to charge them with being "soft on crime."

As Saletan points out, these tactics tapped into notions at which feminists had always recoiled. Pro-choice advocates found themselves casting pregnant women as victims instead of moral actors and accepting the idea that there were more and less innocent pregnancies. They even flirted at times with racist appeals. During the 1990 North Carolina senate campaign, one consultant went so far as to suggest an ad telling voters, "Jesse Helms wants your daughter to have Willie Horton's baby." Needless to say, the ad never ran.

By the early 1990's, Saletan argues, "a new mainstream" on abortion had emerged. On the one hand, Democrats like Bill Clinton endorsed parental-consent laws and restrictions on state funding; on the other, Republicans put aside their efforts to overturn *Roe* in favor of what George W. Bush called "reasonable restrictions." For Saletan, this consensus around the "conservative" ideas identified years earlier by NARAL showed how far the pro-choice movement had allowed itself to stray. The activists "had saved *Roe*," he concludes, "but in the streets and in their souls they had lost the struggle to define it."

DESPITE TACKLING one of the sorest issues in American political life, and despite being written from the point of view of abortion-rights advocates, *Bearing Right* is remarkably low on cant and partisanship. In large part this is because Saletan's concern is less abortion *per se* than the character of modern political campaigns, a focus that at times, as we follow the same struggle through a multitude of settings, can also make *Bearing Right* repetitious. Saletan's achievement is to illustrate neatly the tension between ideals and political success, between advocates devoted to a cause and candidates who have to win votes. He also brings to life

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some of the interesting characters who inhabit the new age of political gamesmanship, particularly the brilliant political consultant Harrison Hickman, a North Carolinian at ease with both feminists and his Confederate neighbors, and the person chiefly responsible for helping NARAL to refine its message.

Still, *Bearing Right*'s picture of the "abortion war" tends to political melodrama where more nuance would have been in order. By framing his analysis in narrow political categories and dwelling on events in Southern "backwaters" like Alabama and Louisiana, Saletan leaves the impression that the abortion debate has been won by a conservative faction. But support for parental-consent laws, for instance, is so widespread in the United States that it clearly crosses conventional political boundaries, encompassing not just Southern Baptists but also soccer moms in the Chicago suburbs.

Moreover, it is far from clear that support for such things as parental-consent laws is an ideologically "conservative" position. Even in "progressive" Western Europe—where public opinion about the size of government, law and order, and family values is well to the left of the U.S.—restrictions like parental-consent laws are the norm, as are waiting periods and major limits on abortions performed after twelve weeks. By Saletan's logic, these policies would have to be somehow an expression of American-style Reaganite conservatism.

In casting abortion policy as the outcome of a war between ideological factions, Saletan fails to grasp that Americans—evidently much like their Western European cousins—are not so much conservative or liberal on this issue as deeply ambivalent. Parental-consent laws, bans on partial-birth abortion, and waiting periods can be seen as the objective correlative of that uncertainty. Seen from a wider angle, the history Saletan describes looks less like a battle of rival political principles than a messy, democratic way of finding a satisfactory balance between the autonomy of women and the claims of nascent life.

None of this means, as Saletan suggests, that America's abortion war is nearing an end. After all, for many people, the current balance, such as it is, is a profoundly immoral state of affairs. That is certainly the way Norma McCorvey now sees it, and if she can change her mind, the politics of abortion may yet hold more surprises for us.

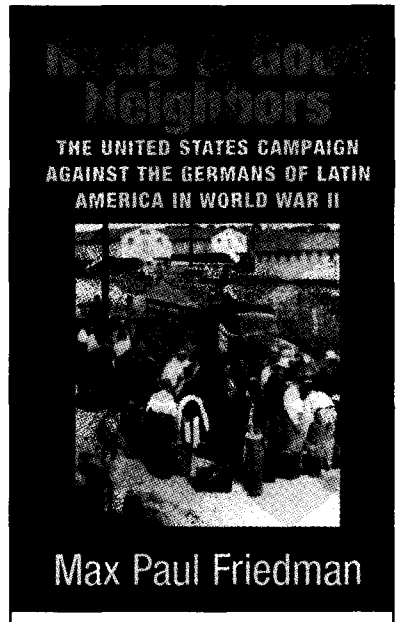
A Tyrant's Tale

Robert Mugabe:
A Life of Power and Violence
by Stephen Chan
Michigan. 243 pp. $27.95

Reviewed by
Claudia Rosett

Rarely is there room in our headlines for more than one Africa crisis at a time. That distinction, when conferred at all, usually goes to the African nation—currently Liberia—in which the most flamboyant killing has most recently occurred. Among the stories too often passed up is a long-running tragedy that has by now assumed Shakespearian proportions: the wreck of once-promising Zimbabwe under the increasingly ruinous rule of Robert Mugabe, now in his 23rd year in power. Once hailed as an international statesman, the one-time Marxist guerrilla leader now has assumed the role of reviled tyrant, with his government suspended from the British Commonwealth and placed under targeted sanctions by both the U.S. and the European Union.

Claudia Rosett *contributes a biweekly column, "The Real World," to the* Wall Street Journal*'s online edition,* OpinionJournal.com.



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In a compelling account, Friedman exposes the secret American pursuit of German nationals in fifteen Latin American countries and the internment of 4,000 Germans in the Texas desert during World War II. The detainees represented a broad range of German immigrants, including Jewish refugees, and most of them posed no danger to national security. A historical account, *Nazis and Good Neighbors* is still relevant today as security measures are based on group affiliation rather than individual actions.

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How the seventy-nine-year-old Mugabe traced this arc is the subject of Stephen Chan's *Robert Mugabe: A Life of Power and Violence*. Though the title suggests a personal portrait, Chan claims no intimate knowledge of Mugabe and provides few private details about the man. He offers instead a chronicle of his subject's political machinations—the "great circles" he has "looped and spun"—since the 1970's. A one-time official of the Commonwealth who is now on the faculty of the University of London, Chan has a long and close acquaintance with Zimbabwe's people and politics. He clearly understands the price the country has paid for Mugabe's reign—even if, in the end, he does not seem to fathom Mugabe himself.

CHAN BEGINS with the endgame of the British colonial era. In 1979, Prime Minister Margaret Thatcher decided to unload the headache of Ian Smith's rogue white-minority-ruled Southern Rhodesia by hammering out a deal to recognize an independent nation, legitimized by elections. After years in prison, Mugabe swept the 1980 elections and, to the relief of many—one of Rhodesia's largest papers had warned that the Marxist guerrilla leader would ban Christmas—began his rule with a call for peace and reconciliation. "Whatever the later view of Mugabe," Chan writes, "there was not an unimpressed person in Whitehall and the dying Rhodesia." There followed what Chan describes as a two-year honeymoon, a spell of "naiveté and real idealism" during which Mugabe seemed "a moral statesman."

But things quickly changed. By 1982, an international banking crisis had hit the economy hard. The International Monetary Fund arrived with its austerity measures, and "the first whiffs of corruption began to appear." In the mid-1980's, Mugabe, a member of the Shona tribe, let loose the army's Fifth Brigade on the rival Ndebele tribe. These storm troopers, specially trained by North Korean military advisers during the first two years of Mugabe's rule, brought to their task "gratuitous cruelty," Chan writes; "the idea was not only to leave bodies, but pieces of bodies, as a warning to others." By the time this assault ended in 1988, an estimated 18,000 Ndebele had been murdered, thus taming Mugabe's chief opposition. In Zimbabwe, people were afraid to speak of the atrocities, and in the West they received almost no notice.

Mugabe, meanwhile, had won his first re-election, and was gaining stature on the world stage. The year 1986 brought him the chairmanship of the Non-Aligned Movement. In 1991, he hosted the Commonwealth summit that produced the Harare Declaration on human rights, and used the occasion to stress his own commitment to an open, democratic society. This, Chan suggests, was Mugabe's high-water mark, a moment when he "really seemed to believe in pluralism and rights."

But the next decade revealed, yet again, a very different sort of leader. Mugabe began to agitate about the issue of land redistribution, a rallying point because a few thousand white farmers still owned the bulk of Zimbabwe's most productive land. He sent Zimbabwean troops to join the warring factions in resource-rich Congo, thereby draining the public purse. When the global financial crisis hit Zimbabwe in 1998, the value of the currency dropped by half and students rioted in the capital, Harare, demanding that Mugabe go. About the same time, the union leader Morgan Tsvangirai began his rise to political prominence, becoming the first serious challenger to Mugabe's rule.

Mugabe's response to these crises was a referendum in 2000 on a new constitution, designed to enlarge his own presidential powers. When it went down to defeat, he decided, after decades of inaction, that it was finally time to do something about

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land redistribution, calling it a vital matter of racial "justice." Mobs of supposed veterans of the original guerrilla war of independence—most of them were, in fact, young loyalists of Mugabe's party, led by a Polish-trained doctor who nicknamed himself "Hitler"—quickly seized white-owned farms. The brutal, lawless campaign struck a heavy blow to Zimbabwe's already wrecked economy, turning a former breadbasket of southern Africa into a land where some six million people—almost half the population—now live on the edge of famine.

But the devastation had its political uses. While Mugabe's government channeled food to his supporters, Chan reports, those in the political opposition were allowed to go hungry. In 2002, in a campaign marked by government intimidation, beatings, torture, and murder, as well as rigged voting procedures, Mugabe won yet another term as president. Since then, things have only gotten worse.

Chan has filled his book with interesting details and anecdotes, the kind of things one tends to learn after hours, and over drinks, from jaded Western diplomats. One telling account describes Mugabe and his second wife, Grace, off on a buying spree during the financial crunch of 1998—to Harrod's in London so she can shop for clothes, then to France, Egypt, and Italy so he can shop for arms. Plain, too, in this material is Chan's own long romance with Zimbabwe. As he says of a Saturday night in Harare at the Italian Bakery, a popular café and bar with a multiracial clientele, this is "the Zimbabwe of dreams: buoyant, mixed, cosmopolitan, young enough to be idealistic."

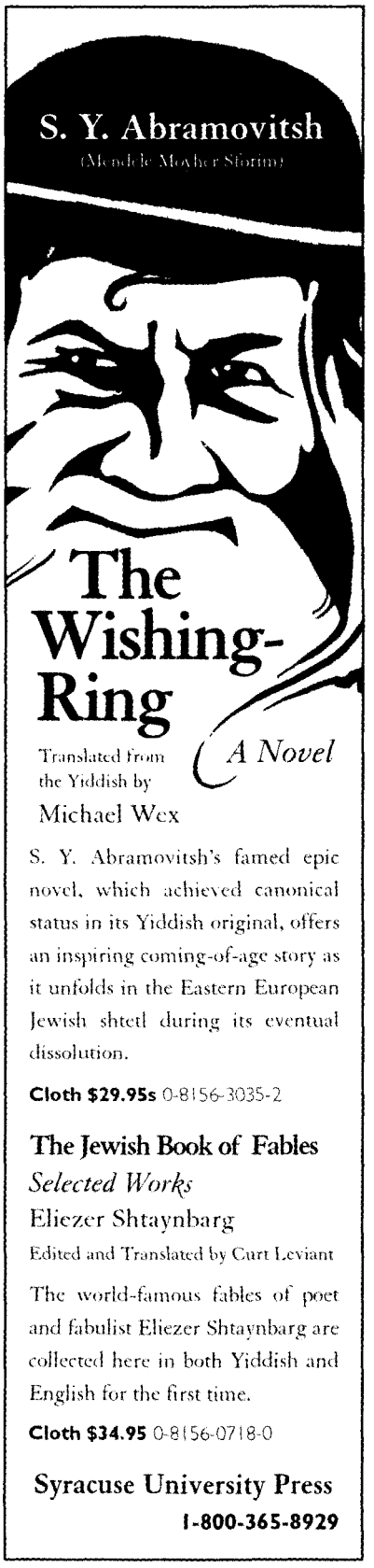
Still, reaching the final page of this book is a relief, and not simply because Mugabe is a deeply unpleasant subject. Chan writes in an elliptical style, rich in descriptive texture but not always clear on such matters as sequence and sources. Nor, frustratingly, does he ever provide a basic summary of Mugabe's background—where he was born, where he went to school, how he became a Marxist, etc.

Less forgivably, Chan seems so immersed in the nuances of his account that the big picture gets away from him. Though he concludes, reasonably enough, that Mugabe has "missed his chance to enter history without shame," he also insists that he does not wish to demonize his subject. "There is no simple explanation of Mugabe," Chan writes; "after a complex political life," the Zimbabwean president is "complexly bad."

This will not do. Though Mugabe the man may pass all human understanding, Mugabe the politician is less of a mystery. Chan himself, with his welter of detail, shows that Mugabe has been entirely willing to do whatever it takes to stay in power. Elections were fine—as long as Mugabe won them. But when challenged, he reverted to tactics learned in the last century at the knee of Stalin, Mao, and Kim Il Sung. Even during Mugabe's "honeymoon"—those first few years in office, deemed so hopeful by Chan—the North Korean military advisers were arriving to do their dirty work.

Chan repeatedly notes both the Communist-Chinese training of Mugabe's old guerrilla cadres and the parallels between today's Zimbabwe and the Cultural Revolution, only to dismiss Mao's influence. Similarly, he observes the "Stalinist imprints" in Mugabe's treatment of his rivals, but then explains that Mugabe has been different things—a pragmatist, a statesman, a man seeking "validation"—at different times.

The bottom line is that, though the great totalitarians of the last century are dead, their toolkit survives among tyrants willing to use it. And that, as Stephen Chan conveys despite his own disavowals, goes far to explain the murderous career of Robert Mugabe.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Wish List

The Two Percent Solution: Fixing America's Problems in Ways Liberals and Conservatives Can Love
by Matthew Miller
Public Affairs. 304 pp. $26.00

Reviewed by
Dan Seligman

I HAVE long cherished an op-ed piece served up by Thomas Sowell in 1985 and headed "The Wonderful World of Solutions." Its title whimsically echoed the *Wonderful World of Disney*, a longtime children's television favorite, and made the point that in the thorny real world of public policy, we almost never encounter problems just needing to be "solved." What we endlessly confront instead are hard choices among competing alternatives, all guaranteed to leave us with plenty of lingering trouble. The real-world menu offers trade-offs, not solutions.

Matthew Miller has an alternative perspective. He worries about our country's "solutions gap," and proposes to abolish it by definitively solving several of our largest social problems. The heart of his message is that we can, and must, address three of them by (1) providing universal health insurance, (2) decisively elevating the educational achievement of poor and minority children, and (3) dramatically raising the earnings of low-wage workers. Along the way, he would also *really* reform campaign finance—because, absent reform, there is no way even to gain attention for his tripartite agenda.

If only we put our minds to it, Miller says, we can solve these problems at a price that is reasonable. That price is "two cents on the dollar," i.e., 2 percent of gross domestic product, a figure that currently works out to around $220 billion a year. But the "two-percent solution" of his title would not be a net addition to current government spending. Miller claims that we could easily find $220 billion or more via spending cuts and socially desirable tax increases, e.g., a 60-percent increase in gasoline taxes. So the net effect would be to restructure—but not to augment—federal spending. Or so he says.

THERE ARE always good reasons for suspecting that people with Big Solutions are utopians and/or crackpots, but Miller seems to be neither. At forty, he has already had quite a career as a wide-ranging journalist (the *Atlantic*, the *New Republic*, National Public Radio), a management consultant (McKinsey & Co.), and senior adviser to the director of the Office of Management and Budget during the early Clinton years. He is an engaging writer and out-of-the-box thinker, and it rapidly emerges that his proposals are far more interesting than the Marshall-Plan-for-the-Poor manifestos ground out by think tanks for several decades.

The main point of the early portion of Miller's book and a major theme throughout is that "We're Not Serious"—the title of his first chapter. By "we" he means mainly the politicians in our nation's capital, whom he rates incapable of getting beyond incremental fixes and unable to stop pretending that these fixes are a big deal. ("The illusion of action is Washington's oldest con.") In these early chapters, Miller also quickly establishes that he is not your standard-model left-wing thinker, and makes a point of differentiating himself from the ritualistic liberals traditionally identified with anti-poverty programs.

Miller is committed, he tells us, to free markets as the ultimate source of America's wealth. He derides the Teddy Kennedy-style, Old Democrat politicians who still twitch suspiciously in the presence of market-friendly policy proposals. And among the authority figures on whom he draws for his ideas—particularly for his ideas about luck—one finds not only the liberal philosopher John Rawls but conservative eminences like William J. Bennett and Milton Friedman.

Luck is pivotal to Miller's argument—or at least to the part seeking to persuade readers that we need to get serious about the problems of the poor. The poor, he argues, are synonymous with the unlucky. Implicitly brushing aside the classic distinction between "deserving" and "undeserving" poor, he defines luck so that it embraces such matters as the genes one is born with, assuming (with good reason) that those genes affect not only raw ability but success-orienting traits like drive, conscientiousness, and character.

In reckoning with this inequality, Miller leans heavily on Rawls's widely celebrated *A Theory of Justice*

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(1971). Rawls confronts his readers with a now-famous thought experiment in which individuals not yet born, and knowing nothing about their future circumstances on the planet, decide upon basic principles of social organization. Behind their "veil of ignorance," they would, Rawls argues, defensively opt for egalitarian principles, seeking to do the most possible for the worst-off—among whom, after all, they might find themselves.

Miller's remaining chapters deal mainly with the politics and economics of his three big proposals. He makes a far better case for liberal solutions than any liberal I have read in recent years. His solutions uniquely combine a powerful moral dimension with economic sophistication and a lot of original thinking. But they also contain a fair amount of wishful thinking.

Indeed, some wishful thinking is built into his emphasis on Rawlsian egalitarianism. Having brought *The Theory of Justice* onstage in a big way, Miller seems unclear about how its abstract principles might be made to work in a political setting. How, after all, is one going to break the bad news to Congress that a leading political philosopher has assessed its achievements—all the laws of the United States—and found them fundamentally inegalitarian and in need of a complete overhaul?

Miller's three big proposals get quite varied marks on my scorecard. He does best in pleading for his universal health-insurance plan. The plan would be financed by tax credits, with the uninsured (now numbering around 42 million) using these credits to buy coverage in the private market. The system he envisages would gradually shift responsibility from employers (who would be delighted to get rid of the problem) to the individual buyer. The tax credits would cost the federal government perhaps $80 billion a year, but alternative versions, including one recently promoted by the Heritage Foundation, could be had for maybe $55 billion. Unfortunately for Miller's "solution," a lot of Americans do not want health insurance in the first place—or, more precisely, they would prefer to spend their incremental income on better living, and take their chances in the local hospital's emergency room.

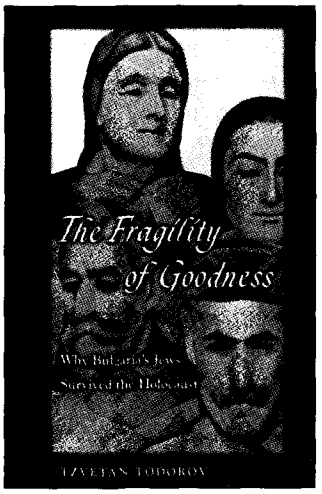
Much less impressive—and heavily dependent on wishful thinking—is Miller's plan for solving the problems of poor and minority children in dysfunctional schools. His solution relies partly on a huge expansion of voucher programs but mainly on sizable federal investments in teacher salaries. Getting serious about these children, he argues, means raising the salaries of their teachers by 50 percent. Costing perhaps $30 billion a year, his plan would enable the best teachers in those schools to earn as much as $150,000 a year.

Thinking Allowed

The Fragility of Goodness

Why Bulgaria's Jews Survived the Holocaust

Tzvetan Todorov



Translated by Arthur Denner

"Where is the boundary between complicity and resistance, between self-righteousness and effective action? These are the questions that Todorov raises.... [His] book is not a work of history; it is an essay in the moral analysis of history."
—Omar Bartov, *The New Republic*

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The point, of course, is to attract some serious talent to the teaching profession. Miller refers to "research showing that half the achievement gap facing poor and minority students is due not to poverty or family conditions but to systematic differences in teacher quality." But he does not cite any *particular* research. This is an astounding omission. There is an avalanche of data, going back to the famous Coleman report of 1966 and extending into the 1990's, telling us that school spending has little discernible effect on student achievement and that family background remains all-important.

Perhaps strangest of all is Miller's proposal to raise the wages of low-income workers. He says that some 15 million Americans live in households headed by full-time workers but remain below or near the official poverty threshold, now $18,400 for a family of four. His proposed raise would come not through another increase in the minimum wage—which would tend to reduce employment—but by a direct federal subsidy to employers. For workers at or near the minimum wage, now $5.15 an hour, the subsidy would add something like $3 an hour, with lesser payments to those earning more and a complete phase-out at, say, $14 an hour.

This plan would be enormously expensive, apparently costing over $100 billion a year. It seems strange, if only because nobody has identified the problem that is being "solved"—workers' desire for higher pay—as anything like a crisis in American life. Stranger still is the notion that American taxpayers would willingly reach into their pockets and add as much as 50 percent to the pay of the country's least productive workers.

Finally needing to be mentioned in any discussion of a book subtitled "Fixing America's Problems in Ways Liberals and Conservatives Can Love" is Miller's fierce disdain for defense spending. At a time when the world is more dangerous than ever, when the Iraq occupation is costing $1 billion a week, and when our armed forces are universally acknowledged to be stretched thin, his only discernible thought is that we need major cuts in the military budget.

It leaves one wondering whether Miller is in any position to upbraid our political establishment as "unserious."

Fellow Travelers

In Denial: Historians, Communism, and Espionage

by John Earl Haynes and Harvey Klehr

Encounter. 280 pp. $25.95

Reviewed by
Steven G. Marks

IF WE now know beyond a shadow of a doubt that Alger Hiss, Julius Rosenberg, and scores of other American Communists were spying for the Soviet Union, it is in large part thanks to John Earl Haynes and Harvey Klehr. Their research in Soviet KGB and Comintern archives and the Venona files of the U.S. National Security Agency has resolved many previously open questions about the nature of the American Communist party (CPUSA). In a series of books recently published by Yale, Klehr and Haynes brought to light a mass of documents proving that the CPUSA was, from start to finish, subordinate to Moscow, and that its most consequential activity from the 1930's through the 1950's was a number of espionage operations that significantly compromised the security of the United States.

One would think that, with the abundant evidence these scholars have presented, the issue would be settled. Far from it. Their books have ignited a firestorm of criticism from left-wing "revisionist" scholars and journalists who refuse to accept the findings themselves and denounce Haynes and Klehr as McCarthyite reactionaries. Hence *In Denial*—a lengthy rebuttal of these critics, and an indictment of the historical profession for tolerating pro-Communist historians who deny or defend the treason committed by hundreds of American Communists.

To Haynes and Klehr, revisionist writings on Communism are the intellectual and moral equivalent of Holocaust denial by the Nazi sympathizer and pseudo-historian David Irving. They first level this charge at American Sovietologists like J. Arch Getty and Robert Thurston, who low-balled the number of victims of the Stalinist purges or questioned the existence of mass terror in Stalin's Russia. This brand of revisionism, write Haynes and Klehr, operates in tandem with the whitewashing practiced by historians of *American* Communism, who have been oblivious to the conspiratorial nature of the CPUSA and its slavish obedience to Moscow's dictates.

Going over ground covered in their previous books, Haynes and Klehr adduce multiple documentary sources to show that in the 1930's and 1940's, the Kremlin handpicked the leadership of the CPUSA and the party then unquestioningly accepted every twist in the Soviet line, from the murderous show trials of the 30's through Stalin's 1939 pact with Hitler and beyond. For over a half-century, the American Communist party received millions of dollars in annual subsidies from the USSR, some portion of which went to the "secret apparatus" that carried out missions for Soviet foreign intelligence. American Communist-party members kept tabs on Russian émigrés and the Orthodox Church,

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infiltrated Jewish organizations, kidnapped defectors, and helped arrange the assassination of Leon Trotsky in Mexico.

For their part, the Venona cables—Soviet intelligence telegrams of the mid-1940's decrypted by American code-breakers—confirm the reliability of the ex-Communists Elizabeth Bentley and Whittaker Chambers, who testified before the House Un-American Activities Committee against their erstwhile comrades involved in espionage operations within the U.S. government and atomic-weapons laboratories. In great detail, Haynes and Klehr recapitulate the overwhelming evidence of spying by Hiss, the Rosenbergs, and two high-ranking American officials: FDR adviser Lauchlin Currie and Harry Dexter White, the Assistant Secretary of the Treasury appointed by President Truman to head the International Monetary Fund.

Yet, as Haynes and Klehr show, most revisionist scholars either ignore the "dirty tricks" of Soviet espionage or twist the meaning of the evidence beyond recognition. Thus, according to Bernice Schrank of Memorial University in Newfoundland, what was involved was not spying but merely the "unauthorized technological transfer" of atomic secrets to the deserving Soviet defenders of humanity. Others, less honest, dismiss the evidence of treason as fraudulent or simply omit mention of anything that would tarnish the reputation of their heroes.

Indeed, instead of confronting the issue of espionage, these historians harp on the evil of American *anti*-Communism. For Ellen Schrecker, a history professor at Yeshiva University, this "longest-lasting episode of political repression in our nation's history"—she uses the catchall term of McCarthyism for any and all detractors of the CPUSA—"tap[ped] into something dark and nasty in the human soul." To Joel Kovel, holder of the Alger Hiss professorship at Bard College, America's obsession with anti-Communism during the cold war led the U.S. to become "the enemy of humanity."

Predictably, the revisionists lump the McCarthyites together with every other kind of anti-Communist in an imaginary coalition of retrograde elites; these they accuse of thwarting the egalitarian social transformations that, they are certain, the CPUSA would have brought to post-1945 America. Believing that the sins of anti-Communism were far greater than any committed by American Communists, they conclude that, to quote Schrecker again, "whatever harm may have come to the country from Soviet-sponsored spies [was] dwarfed by McCarthy's wave of terror."

In Denial thoroughly dissects this revisionist literature. In doing so, it also defends the record of anti-Communism, which Haynes and Klehr show to be a perfectly legitimate position enjoying broad support across the American political spectrum. Conservatives and socialists alike understood the serious threat posed by domestic Communism, and the anti-Communism of the postwar era, was, Haynes and Klehr write, "a rational and understandable response to a real danger to American democracy." As in all their writings, they make a clear exception of McCarthyism, which they unequivocally condemn as a "wild and irresponsible" impulse that resulted in untold damage to anti-Communism itself.

In sum, *In Denial* convincingly demonstrates that the revisionist historians are for the most part not historians at all but propagandists who ignore basic truths about their subject, pay little heed to standards of evidence, and express a hatred of the American political and economic order. If Klehr and Haynes had stopped there, this book would have been a significant contribution to the historical record. Unfortunately, they do not stop there.

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In Denial opens with a description of the way graduate students are reputedly taught history these days: in "boring seminars" that fail to explore the "actual events and people that make history interesting and dramatic," they learn to engage in "tedious discussions of sources" and in "carping about interpretations." This caricature is followed by an attack on the supposed "gatekeepers" of the historical profession—namely, the editors of the *American Historical Review* and the *Journal of American History*—who have allegedly "silenced debate" by refusing to publish articles about the CPUSA written from an anti-Communist perspective.

True enough, these journals do not publish such articles. But it is also true that, preoccupied as they are with a variety of faddish historical approaches, they publish very little on *any* traditional political subject, be it American Communism or the American Civil War. That is why most scholarly articles these days appear in specialized journals, the proliferation of which ensures that there are no gatekeepers in the historical profession. In any case, the fact that Haynes and Klehr have themselves been published by Yale University Press suggests that their point of view is hardly being suppressed.

One must also challenge the authors' assertion that "the enormous human cost of Communism barely registers in American intellectual life," or that "a sizable cadre of American intellectuals now openly applauds and apologizes for one of the bloodiest ideologies of human history." This may or may not be true of American intellectuals in general, but if Haynes and Klehr are speaking about historians, they are wrong. There are approximately 25,000 historians in the United States. Focusing on a handful, *In Denial* tars the entire lot.

One *could* tar the entire lot—or at least a highly vocal portion of it—for many things, from the obsession with the politically correct mantra of "race, class, gender" to the theoretical gobbledygook of post-modernism. But the vast majority of scholars are not soft on Communism. Neither are they hard on it. They simply do not think about it—which may, indeed, explain why the revisionists have gotten away with their gross distortions of the historical record.

It is a pity that Haynes and Klehr exaggerate the sway of the revisionists. It would be an even greater pity if their overstatements in this regard were allowed to obscure their perfectly valid refutation of the pernicious junk now being published about the American Communist party—and their invaluable correcting of the record.

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What Harry Potter Can Teach the Textbook Industry

Diane Ravitch is a research professor, New York University; distinguished visiting fellow, Hoover Institution; and member, Hoover's Koret Task Force on K–12 Education.

As the world knows, the latest installment in the Harry Potter series sold five million copies on the first day it was available. Many thousands (or millions) of American children stood in line for hours to buy the book.

Here's the rub: the same children complain incessantly that their textbooks are boring. Whereas they hunger to get a Harry Potter book of nearly nine hundred pages, they can barely tolerate the equally large books that are assigned in school.

What does Harry Potter have that the textbooks don't?

Today's textbooks represent a major achievement in visual design. They glitter with charts, photographs, drawings, and pedagogical advice to the reader. But they are boring.

While researching a book about textbooks, I asked a major publisher why the textbooks are so heavy with graphics. He said, "American kids don't like to read anymore. They are so accustomed to watching television and the Internet that a book can't hold their attention without lots of visual stimuli."

The success of the Harry Potter series shows that this assumption is wrong. American youngsters will read books that are exciting and well written, regardless of their graphics. They devour the Potter books because author J. K. Rowling has infused them with classic themes drawn from legend and myth, as well as biblical imagery. Like J.R.R. Tolkien's *Lord of the Rings* books, Rowling's books resonate with suspense, mystery, intrigue, and showdowns between the forces of good and evil.

In contrast to the gripping tales told by Rowling and Tolkien, our history textbooks skim lightly above the surface of events, ignoring the fact that history is first of all a story. The history books excel at mentioning vast numbers of events, people, and ideas and compressing them into short summaries of a page or two. The drama of history and biography is sacrificed to the imperative of "covering" everything in a single volume. **Clashes of good and evil have been banished, replaced by pedestrian prose and thumbnail sketches.**

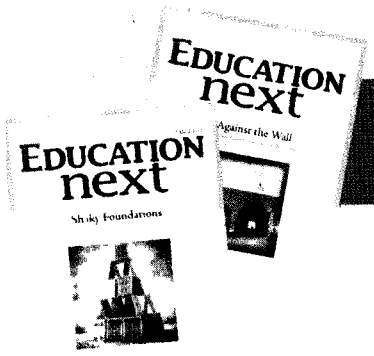
Similarly, our reading and literature books have achieved the heights of banality. Those who assemble them are careful to weed out controversial themes, anything that might upset pressure groups from left and right. They aim not to engage students' imagination but to bolster their self-esteem. Demographic correctness—the right percentage of authors and characters from every possible segment of society—has become more important than literary excellence.

Harry Potter has triumphed because his author understands the power of story. If the story is good enough, children will take a flashlight to bed so they can keep reading after the lights are out. Unlike textbook publishers, who must screen everything they print to avoid giving offense, she is free to write about a dysfunctional family, about the moral necessity to confront evil, and about how bad things happen to good people.

There is something terribly wrong with the political process that dulls the materials in our classrooms. Our children quite rightly reject writing that has been processed and homogenized by scores of textbook committees.

— *Diane Ravitch*

Paid for by the Hoover Institution, Stanford University.



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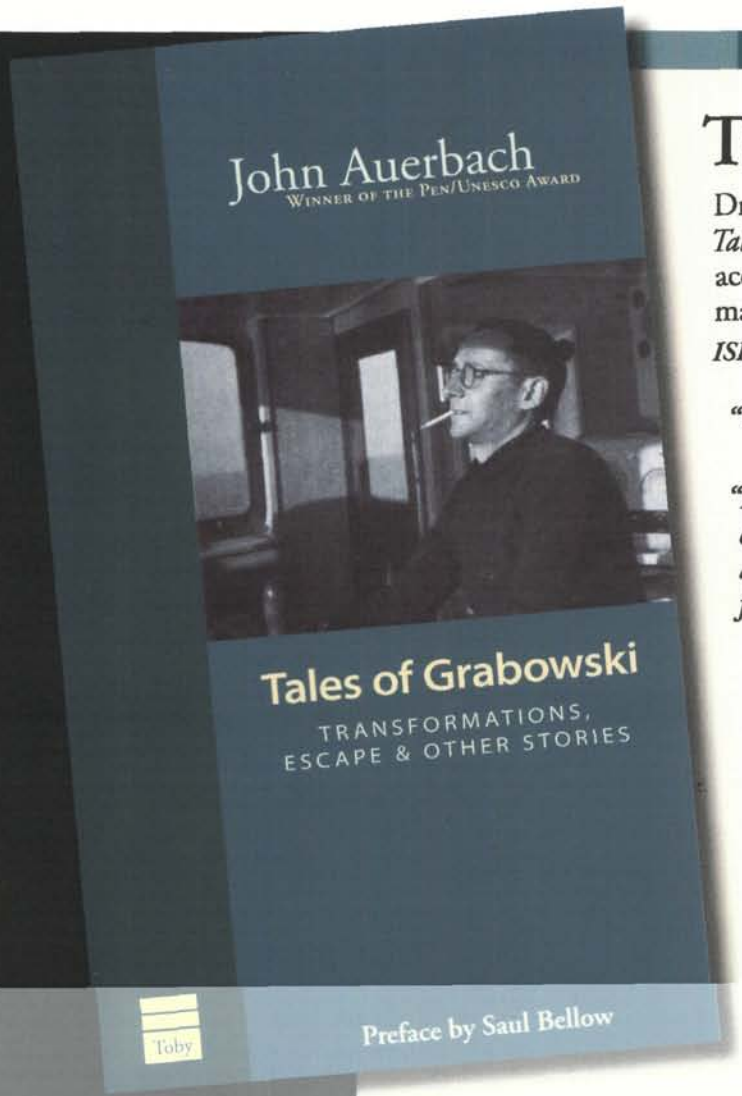

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